



COUNTY OF SANTA CRUZ

PLANNING DEPARTMENT

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TOM BURNS, PLANNING DIRECTOR

September 22, 2009

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

Agenda Date: October 28, 2009

Item #: 8

Time: After 9 AM

APN: 027-111-33

Subject: A public hearing to consider an appeal of the Zoning Administrator's decision to approve application 09-0124; a proposal to demolish an existing one-story single family dwelling and to construct a two-story 800 square foot single family dwelling, attached garage and basement.

Members of the Commission:

BACKGROUND

Application 09-0124, a request to grant two variances in order to construct a replacement dwelling on a small parcel, was originally scheduled to be heard on July 17, 2009. Prior to the hearing date the applicant asked that his item be continued in order to re-design the second story in order to comply with the required front yard setback. Following design changes to the second story and the addition of a 400-square foot basement, the item was re-scheduled for August 21, 2009.

Based on the staff findings and conditions of approval, the proposal was approved by the Zoning Administrator on August 21, 2009. (Exhibit B to Attachment 1). An appeal was filed on September 2, 2009 by Jerry and Nancy Thomas, Cynthia Ferris, Douglas Bergengren and Ronald Crane (hereafter "appellants") owners of three parcels located immediately adjacent to the proposed development (Attachment 1). After consideration of the applicant's appeal, staff recommends that your Commission uphold the Zoning Administrator's approval of Application 09-0124.

PROJECT DESCRIPTION

The applicant seeks to demolish an existing one-story single-family dwelling and to construct a two-story 800 square foot replacement dwelling, attached garage and basement. The project is located within the Yacht Harbor portion of Live Oak. The subject property is 1,600 square feet in area and was created in 1936 by deed. The single-story house that currently occupies the lot was constructed in 1921 and is non-conforming with respect to front and rear yard setbacks, as well as lot coverage, floor area ratio. The existing dwelling is significantly non-conforming with

to the eastern side yard setback. Additionally, the property as currently configured provides no off-street parking spaces.

The replacement dwelling would be smaller in overall square footage, would conform to lot coverage, floor area ration, front and side yard setbacks and would restore the required on-site parking spaces. In order to accommodate the site standards and parking requirements, the new dwelling will require a variance to encroach 10 feet into the rear yard setback and to decrease the required garage setback from 20 feet to about 16 feet.

The following table presents a comparison that may serve to illustrate the proposed changes between the existing dwelling and the proposed replacement dwelling:

Category	Site Standard	Existing Dwelling	Proposed Dwelling
Front Yard – 1 st Floor	10 feet	4.69 feet	10 feet
Front Yard – 2 nd Floor	15 feet	N/A	15 feet
Side Yard – east	5 feet	1.73 feet (Significantly Non-conforming)	5 feet
Site Yard – west	5 feet	5.84 feet	5 feet
Rear Yard	15 feet	0 feet	5 feet (1st floor) 9 feet (2nd floor)
Lot Coverage	40%	66%	40%
Floor Area Ratio	50%	53% (est)	50%
Off-street Parking	2 spaces	0 spaces	2 spaces

Bold figures indicate variations from site standards

As the table shows, the proposed replacement dwelling will eliminate several existing instances of non-conformance with required site standards. While the new second story does represent a new area of impact, this is the result of bringing the new dwelling into compliance with all other standards, including the provision of all required off-street parking. The reduction in building height from 28 feet to 21 feet and re-design of north-facing windows mitigate the impact of the second story given the constraints of this lot.

ANALYSIS AND DISCUSSION OF APPEAL ISSUES

The grounds of this appeal, as described in the brief letter of appeal dated September 2, 2009 are that the Zoning Administrator “misapplied the law in granting the Development Permit and the variances” and “some of the Zoning Administrator’s findings were not supported by substantial evidence.” The appellant asserts that there is no substantial evidence in support of the findings for approval of the development permit and two variances. The appeal letter does not explicitly state which of the findings are in dispute. In the absence of a detailed statement of the specific issues to be considered under this appeal, the staff response will address those concerns raised in writing prior to the August 21, 2009 hearing as well as items discussed during the hearing itself.

Retaining the Existing Structure

The appellants asserted prior to and during the Zoning Administrator's hearing that the retention of the existing non-conforming house would be a superior alternative to the proposed development. Further, the appellants stated that the granting of the variances would be inconsistent with General Plan Policy 8.4.2, which encourages the maintenance and repair of existing housing stock.

It is important to note that the eastern and northern portions of the dwelling are built very close to the property line, which violates current building and fire codes and has serious implications for both the subject property and neighboring properties. The location of the existing house within five feet of the property line on two sides, for instance, does not currently meet Chapter 34 of the California Building Code with respect to protected openings and fire ratings. There also appear to be interior building code deficiencies with respect to ceiling height, ingress/egress and foundation construction.

In addition to encroaching into side and rear setbacks, the existing dwelling exceeds the maximum allowed lot coverage by nearly 70%, exceeds floor area ratio and provides no off-street parking. The appellants have stated that they believe the existing structure can and should remain on site, this cannot occur without the issuance of several variances. However the existing house is currently "red-tagged" for unpermitted construction and Section 13.10.254 of the County Code requires variance approval to recognize the illegal structural alteration. Such variance approval could not be made due to the required findings concerning health and safety. The granting of a parking variance moreover would constitute a special privilege in that no such variances have been approved in the vicinity of the project site. Therefore, the retention of the existing dwelling is not a feasible project alternative.

Injury to property or improvements in the vicinity

The appellants also feel that the granting of the two variances will be injurious to their properties by negatively impacting their access to light and interfering with the "visual fabric" by blocking windows of neighboring dwellings.

While the addition of the second story, which encroaches 6 feet into the rear setback, may create some impact to the property to the north, the proposed height, at 21 feet, is well below the 28-foot maximum allowed in the zone district and reflects the intent of the property owner to mitigate such potential impact. The dwelling to the north is approximately 30 feet in height, and so is nearly a story taller than the proposed replacement house. The lateral distance between the northern and proposed structures will be 10 feet at the first floor and 14 feet at the second.

Shadow studies created by ArchiGraphics present an image of the potential effect of the second story to surrounding lots in terms of access to sunlight and demonstrate that the impact will be relatively minor. While the appellants have taken issue with the accuracy of the submitted shadow studies, they have been reviewed by the County Urban Designer, Larry Kasparowitz, and determined to be a reasonable representation of how the new structure would impact the surrounding properties.

The parcel to the east of the subject parcel is developed with a single-story dwelling. The owner of this property is also an appellant and has stated that they feel the proposed second story will negatively impact their property as well. Again, while staff agrees that there may be some impact to the single-story dwelling, the proposed replacement house will be *conforming* with respect to the shared side yard setback and there does not appear to be any additional impact to this structure resulting from the rear yard variance. In that the zoning standards allow second stories at a maximum height of 28 feet, the proposed 21-foot structure is not expected to represent a significant impact to this or to any of the neighboring properties.

Parking

Two letters were received from neighbors and much discussion was devoted to the issue of parking. The appellants assert that the granting of a variance to allow less off-street parking or no parking on-site would create significantly less impact to the neighborhood than the proposed variance to the rear yard setback.

The issue of street parking in the Yacht Harbor Area has long been a contentious one, given the chronic shortage. Additionally, the lack of available parking directly impacts public access to beaches, which is a mandate of the Coastal Commission. The existing dwelling currently provides no parking spaces at all, while the proposed replacement dwelling and attached garage provide the two required off street parking spaces. It is staff's position that the provision of required off street parking represents a significant improvement over the existing site configuration.

Although the requirement to provide off-street parking on this substandard lot presents a formidable constraint to the placement of a reasonably-sized single-family dwelling and in fact drives the need for the proposed second story, it remains of primary importance to the proper functioning of coastal neighborhoods such as the Yacht Harbor Area. Therefore, a parking variance is not considered a feasible alternative to the proposal.

Special Privilege

In their August 21, 2009 letter to the Zoning Administrator, the appellants assert that approving the proposed variances constitutes a special privilege inconsistent with the limitations on other properties in the vicinity. There does not appear to be any basis for this claim. The primary obstacle to developing a lot in conformance with all site standards is the very small size of the parcel. The subject parcel is more than 50% smaller than the minimum lot size required for the zone district (3,500 square feet). With the exception of the property immediately adjacent to the east, which was created at the same time as the subject property, all other lots within 750 square feet are roughly twice the area as the subject lot and so would not be similarly constrained. For similar substandard lots such as the adjacent site, some type of variance would certainly be considered in order to either remodel or replace the non-conforming structures that currently exist.

A brief survey of other similarly sized lots in the vicinity of the neighborhood shows that variances were granted in 2000, and 2002 for two properties near the corner of 7th Avenue and East Cliff. The properties are 1,655 and 2,134 square feet in area and variances were granted in order to reduce rear yards setbacks (from 15 to 9 feet), to increase floor area ratio (from 50% to 76% and 55% respectively) and lot coverage (from 40% to 42%). The basis for the granting of each of these variances was the size of the parcel. Any property similarly constrained by a substandard lot would be given the same consideration. It should also be noted that the remaining substandard parcels in the surrounding neighborhood are developed with non-conforming dwellings built between 1923 and 1940, based on Assessor's records.

Hardship

The appellants have stated that the lot size and site standards for the zone district do not create a hardship for the property owners because the owners were aware of the limitations of the lot before they purchased the property and paid substantially less than the value many neighboring properties. Further, the appellants argue that the proposed basement provides additional living space, which results in a house of 1,200 square feet.

Neither the issue of the property owner's knowledge about the constraints posed by the existing property, nor the purchase price of the property have any bearing on the ability to make the findings in support of variance or development approval. The hardship considered concerns what constitutes a reasonably sized and/or configured house. Given the site standards imposed by the R-1-3.5 zone district, a dwelling constructed in the absence of any variances would be no greater than 15 feet in depth and 30 feet across at the first floor and would preclude a garage. The required parking spaces would further reduce the available building footprint, leaving an approximate ground floor building footprint of 322 square feet. A second story subject to current site standards for the zone district would be allowed to be no more than 10 feet in depth resulting approximately 622 square feet of total living space.

The County Code recognizes the difficulties of small parcels and even outside of the variance arena provides relief for sites that are substandard in area. A parcel that is less than 80% of the minimum lot area required by the zone district is allowed to utilize the site standards for the zone district that most closely fits the lot size. In this instance, there is no zone district corresponding to the 1,600 square foot lot size of the subject parcel so there is no relief. However, the code provision illustrates the regulatory framework for allowing a reduction of required structural setbacks in response to a reduced parcel size.

With respect to the proposed basement, it is entirely subterranean, non-habitable and does not meet the Building Code threshold for habitable space. Permit conditions require the recordation of a Declaration of Restriction limiting the use of this space to non-habitable storage.

Other Issues Raised at the Zoning Administrator Hearing

Neighbors in the vicinity of the project site voiced concerns about increased noise impacts that would accompany the granting of the variance. Allowing a setback encroachment of 6 feet would not be a significant noise impact.

Revised Variance Finding

In the staff report written for the Zoning Administrator hearing, variance finding #2 was written in a way that suggests that the existing house has not been detrimental to public health, safety, or welfare and that the replacement house would similarly not be detrimental. In light of the current appeal and review process, it seems prudent to revise the second variance finding in order to more clearly state the basis for making this finding as required in support of the variance approval.

Therefore, the following changes to the wording of the second required variance finding are proposed:

- 2. That the granting of the 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.**

The granting of the 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 in that the existing structure ~~has not been detrimental to public health, safety or welfare and the replacement house is more conforming than the existing.~~ The existing dwelling has occupied the site over 85 years, extending to within inches of the rear property line and non-conforming with respect to lot coverage as well as front and rear yard setbacks. The existing structure is significantly nonconforming, in that it is located less than 5 feet from the adjacent dwelling to the east **and less than 5 feet from the northern and eastern property lines. The existing structure does not currently conform to California Building Code regulations pertaining to firewall construction and protected openings. Additionally the existing house does not conform to required lot coverage, floor area ratio or off-street parking requirements.** The replacement dwelling eliminates or improves all of the existing areas of non-conformance and results in a house that is more than 100 square feet smaller than the house that has historically occupied the site.

Although the replacement dwelling adds a second story where none previously existed, the second floor is setback an additional ~~five~~ **four** feet and allows the adjacent properties adequate access to light and air. **Shadow studies submitted for the project demonstrate that the impact of the proposed second story will be minimal with respect to interfering with access to sunlight** (Exhibit 1C). The proposed home will be seven feet shorter than the zoning ordinance allows.

The revised wording of the variance finding help to clarify the degree to which the proposed dwelling represents an improvement over the existing dwelling with minimal attendant injury to surrounding properties.

SUMMARY

The issues raised by the appellant focus on the perceived detrimental impacts of the proposed replacement dwelling when compared to the existing house on the subject property. The appellants further disagree with the staff analysis asserting that the replacement dwelling

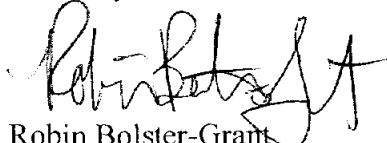
represents an improvement with respect to the degree of nonconformity that currently exists on the property.

The proposed house is 800 square feet in area, modest by most standards, incorporating an attractive design that harmonizes with the surrounding architecture (Exhibit 1D). The height of the proposed replacement dwelling also appears to be compatible with the adjacent one and two-story dwellings.

RECOMMENDATION

The proposed project is consistent with County General Plan policies and ordinances, and staff recommends that the Planning Commission uphold the Zoning Administrator's approval of Application 09-0124 based on the attached revised findings and deny the appellant's appeal.

Sincerely,



Robin Bolster-Grant
Project Planner
Development Review

Reviewed By: 

Paia Levine
Principal Planner
Development Review

Exhibits:

- 1A. Appeal letter, prepared by Douglas M. Bergeren et al, dated 9/2/09.
- 1B. Staff report to the Zoning Administrator, originally heard on 8/21/09.
- 1C. Photosimulations and Shadow Study prepared by Archigraphics
- 1D. Project Plans, Application 09-0124
- 1E. Correspondence
- 1F. Revised Variance Findings

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September 2nd, 2009

Santa Cruz County Planning Commission
701 Ocean Street, Suite 400
Santa Cruz, CA 95060

re: Appeal of a Zoning Administrator's decision

Dear Sir or Madam:

This letter is our notice of appeal of the Zoning Administrator's decision to approve the following application:

Application number:	#09-0124
Date of decision:	8/21/2009
Applicant name:	John Groat
APN:	027-111-33
Property address:	821 Carmel St., Santa Cruz, CA. 95062

We are owners of properties immediately adjoining the project site. Appellants Bergengren and Crane own and occupy the property at 300 8th Ave., immediately west of the project. Appellant Ferris owns the property at 825 Carmel St., immediately east of the project. Appellants Thomas own the property at 311 9th Ave., immediately north of the project.

We are appealing this decision because:

1. The Zoning Administrator misapplied the law in granting the Development Permit and the Variances; and
2. Some of the Zoning Administrator's findings were not supported by substantial evidence. The Development Permit and the Variances cannot lawfully be granted without substantial evidence supporting these findings.

This letter is only a notice of appeal, and will be followed by a Supplemental Statement that describes our objections in detail.

Please add our appeal to the Planning Commission's docket, and inform us of all pertinent requirements and dates, including, but not limited to:

1. The date at which the Commission will hear our appeal; and
2. The date by which our Supplemental Statement must be filed.

Thank you for your help.

Sincerely,

Douglas M. Bergengren
Ronald E. Crane
Cynthia Ferris
Jerry & Nancy Thomas



Staff Report to the Zoning Administrator

Application Number: **09-0124**

Applicant: John Groat
Owner: John Groat & Elizabeth Gruender
APN: 027-111-33

Agenda Date: August 21, 2009
Agenda Item #: 1
Time: After 9:00 a.m.

Project Description: Proposal to demolish an existing one-story single-family dwelling and to construct a two-story 800 square foot single-family dwelling, *400 square foot non-habitable basement* and attached garage. (*Revised by staff at August 21, 2009 Zoning Administrator Hearing*).

Location: Property located on the north side of Carmel St. approximately 35 feet west of the intersection with 9th Ave. (821 Carmel St.)

Supervisory District: 1st District (District Supervisor: John Leopold)

Permits Required: Requires a Coastal Development Permit and a Variance to reduce the required rear yard from 15 feet to about 5 feet, to reduce the required 20-foot setback to the garage from 20 feet to 16' 3".

Staff Recommendation:

- Certification that the proposal is exempt from further Environmental Review under the California Environmental Quality Act.
- Approval of Application 09-0124, based on the attached findings and conditions.

Exhibits

- | | |
|--|-------------------------------------|
| A. Project plans | E. Assessor's, Location, Zoning and |
| B. Findings | General Plan Maps |
| C. Conditions | F. Comments & Correspondence |
| D. Categorical Exemption (CEQA
determination) | |

Parcel Information

Parcel Size:	1,600 square feet
Existing Land Use - Parcel:	Single-family dwelling
Existing Land Use - Surrounding:	Single-family dwelling

County of Santa Cruz Planning Department
701 Ocean Street, 4th Floor, Santa Cruz CA 95060

Project Access: Carmel St.
Planning Area: Live Oak
Land Use Designation: R-UH (Urban High Residential)
Zone District: R-1-3.5 (Single-Family Residential – 3,500 sq ft minimum lot size)
Coastal Zone: ☒ Inside ☐ Outside
Appealable to Calif. Coastal Comm. ☐ Yes ☒ No

Environmental Information

Geologic Hazards: Not mapped/no physical evidence on site
Soils: N/A
Fire Hazard: Not a mapped constraint
Slopes: N/A
Env. Sen. Habitat: Mapped Zayante Band-winged grasshopper; however no habitat on site
Grading: No grading proposed
Tree Removal: No trees proposed to be removed
Scenic: Not a mapped resource
Drainage: Existing drainage adequate
Archeology: Not mapped/no physical evidence on site

Services Information

Urban/Rural Services Line: ☒ Inside ☐ Outside
Water Supply: Public
Sewage Disposal: Public
Fire District: Central Fire Protection District
Drainage District: Zone 5

History

The subject parcel was created in 1936 by the Twin Lakes Park Subdivision. The original lot was 1,400 square feet in area and in 1966, a 5-foot strip of land was added to create the present 1,600 square foot configuration. According to County Assessor's records, the existing single-story dwelling that occupies the site was constructed in 1921. The original structure included a dwelling and attached garage and was approximately 980 square feet in area.

In 2006 a code violation was issued on the property for unpermitted construction of a new roof and exterior siding. During the course of the code investigation it was discovered that the attached garage had been converted into living space. No other additions to the original structure were noted.

The proposed demolition of the original house would address the outstanding code violation.

Project Setting

The subject parcel is 1,600 square feet in area and is developed with the existing residence described previously. The existing house is non-conforming with respect to the front and rear setbacks and significantly non-conforming with respect to the side (east) yard setbacks as a submitted survey indicates a distance of less than 5 feet to the adjacent structure to the east. Additionally, the house exceeds the 40% maximum lot coverage. The lot is flat and is located within the Live Oak Planning Area. The surrounding neighborhood is characterized by one and two-story single family dwellings. With the exception of the lot adjacent and to the east of the subject site, the subject lot is roughly half the size of the other residential lots in the neighborhood. Carmel Street, a County-maintained street, provides access to the property. The project is located within the Yacht Harbor Special Community and subject to Design Review.

The applicant proposes to demolish the existing house and to construct a two-story replacement dwelling and attached garage. The two-story replacement house will be smaller in overall area than the existing dwelling and the proposed ground floor represents approximately 42% of the current footprint. This will allow the replacement dwelling to conform to the side yard setbacks and lot coverage requirements. While the replacement house will continue to encroach into both the 20-foot required between a garage and the street, and rear yard setback, the rear of the dwelling will be between 2 to 5 feet further from the rear property line than the existing house, the front of the house moved as much as 13 feet back from the front property line and the structure will no longer be significantly non-conforming. The new house will also replace the required parking spaces that were lost to the unpermitted garage conversion.

In order to accommodate the lot coverage restrictions and to provide a reasonably sized dwelling on this substandard lot, the new dwelling will require a variance to encroach 10 feet into the rear yard setback and to decrease the required garage setback, from 20 feet to 16 feet.

No grading is proposed for this project and no trees are proposed to be removed. An existing log barrier that extends into the public right-of-way will be removed and new landscaping added.

Zoning & General Plan Consistency

The subject property is a parcel of approximately 1,600 square feet, located in the R-1-3.5 (Single-family residential – 3,500 square foot minimum lot size) zone district, a designation, which allows residential uses. The proposed replacement dwelling is a principal permitted use within the zone district and the project is similarly consistent with the site's (R-UH) Urban High Residential General Plan designation.

Per County Code Section 13.10.552(a), the development is required to provide a total of two on-site parking spaces. The proposed garage accommodates one space; while the additional required space is located in tandem with the garage.

Local Coastal Program Consistency

The proposed replacement dwelling and attached garage is in conformance with the County's certified Local Coastal Program, in that the structure is sited and designed to be visually

compatible, in scale with, and integrated with the character of the surrounding neighborhood. Developed parcels in the area contain single-family dwellings of one and two story construction. Size and architectural styles vary widely in the area, and the design submitted is not inconsistent with the existing range. The project site is not located between the shoreline and the first public road and is not identified as a priority acquisition site in the County's Local Coastal Program. Consequently, the proposed project will not interfere with public access to the beach, ocean, or other nearby body of water.

Design Review

The proposed replacement dwelling complies with the requirements of the County Design Review Ordinance, in that the proposed project will incorporate site and architectural design features such as second story wooden shingle siding, decorative knee bracing and low-pitched roofline to reduce the visual impact of the proposed development on surrounding land uses and the natural landscape.

The properties immediately adjacent to the north and west are developed with two-story dwellings that are taller and substantially bulkier than the proposed subject property (see Exhibit A). The dwelling located to the east is single-story, however the shadow studies indicate that the impact on the availability of light and air to the smaller dwelling will not be significant. Overall, the proposed design adds visual interest and high-quality elements, which represent a positive addition to the existing palette of architectural styles and forms in the neighborhood.

The project has been reviewed and approved by the County Urban Designer, Larry Kasparowitz.

Variance

As previously stated, the lot is 1,600 square feet in area, about half of the size of the majority of the surrounding parcels in the neighborhood and *less* than half of the required minimum lot size for the zone district (R-1-3.5). It is not feasible to construct a modestly sized dwelling on a lot that is only 40-feet deep, given the 10-foot front and 15-foot rear yard required setbacks. Additionally, the garage setback is required to be a minimum of 20 feet. A variance is required in order to reduce the required garage setback from 20 feet to 16.3 feet and to reduce the rear yard setback from 15 feet to 5 feet, in order to provide a minimal 415 square foot ground-level footprint. The variance will not allow any construction that would increase the degree of non-conformity and as noted, the resulting dwelling represents an overall improvement and replaces the significantly non-conforming structure with a structure that presents far fewer impacts to surrounding properties.

The second story will be stepped back from the rear property line and adjacent dwelling to the north in an effort to reduce any potential impact to the neighboring lot. While the second story still will not comply with the 15-foot rear yard setback, it is setback 10 feet, which provides the neighboring property access to light and air as well as privacy. It should be noted that the rear yard of the subject property abuts the side yard of the lot to the north; therefore the northern dwelling can be located to within 5 feet of the shared property line. The height of the new building is only 21 feet, which is less than the 28-foot maximum height allowed in this location. Therefore, the impact of the building height on the rear neighbor is expected to be minimal.

The required 20-foot garage setback is not feasible on the subject property given the 40-foot lot depth. The 16.3-foot proposed setback represents an improvement over the existing building footprint, which is currently less than 10 feet. The proposed garage placement also accommodates the on-site parking requirements. From the perspective of design quality in the neighborhood, a well-designed garage is preferable to open parking in this neighborhood of smaller lots. Because County Code Section 13.10.323 (e)(7) allows front yard averaging on sites situated between lots improved with buildings, the replacement home complies with the front yard setback, which in this case is less than 10 feet. The setback is calculated by averaging the front yards of the dwellings on either side of the subject lot, which are each less than 10 feet. Therefore the proposed replacement dwelling, which is to be set back 10 feet, complies with the provisions of the County Code that allows front yard averaging and a minimum 10 foot front yard setback.

Environmental Review

The proposed residential addition is categorically exempt from review under the Environmental Quality Act (CEQA) consistent with CEQA Guidelines Section 15303, New Construction or Conversion of Small Structures.

Conclusion

As proposed and conditioned, the project is consistent with all applicable codes and policies of the Zoning Ordinance and General Plan/LCP. Please see Exhibit "B" ("Findings") for a complete listing of findings and evidence related to the above discussion.

Staff Recommendation

- Certification that the proposal is exempt from further Environmental Review under the California Environmental Quality Act.
- **APPROVAL** of Application Number **09-0124**, based on the attached findings and conditions.

Supplementary reports and information referred to in this report are on file and available for viewing at the Santa Cruz County Planning Department, and are hereby made a part of the administrative record for the proposed project.

The County Code and General Plan, as well as hearing agendas and additional information are available online at: www.co.santa-cruz.ca.us

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Coastal Development Permit Findings

1. **That the project is a use allowed in one of the basic zone districts, other than the Special Use (SU) district, listed in section 13.10.170(d) as consistent with the General Plan and Local Coastal Program LUP designation.**

This finding can be made, in that the property is zoned R-1-3.5 (Single-Family Residential – 3,500 square foot minimum parcel size), a designation which allows residential uses. The proposed replacement dwelling is a principal permitted use within the zone district, consistent with the site's (R-UH) Urban High Residential General Plan designation.

2. **That the project does not conflict with any existing easement or development restrictions such as public access, utility, or open space easements.**

This finding can be made, in that the proposal does not conflict with any existing easement or development restriction such as public access, utility, or open space easements in that no such easements or restrictions are known to encumber the project site.

3. **That the project is consistent with the design criteria and special use standards and conditions of this chapter pursuant to section 13.20.130 et seq.**

This finding can be made, in that the development is consistent with the surrounding neighborhood in terms of architectural style; the site is surrounded by lots developed to an urban density; the colors shall be natural in appearance and complementary to the site; the development site is not on a prominent ridge, beach, or bluff top. Architectural design features include the use of both wood shingles and stucco siding, ornamental knee bracing, and carriage-style garage door. These elements add visual interest, enhance the relationship with the surrounding dwellings in the neighborhood, and help to integrate the disparate architectural styles that exist in close proximity to the subject parcel.

The proposal meets all design standards that apply to the Harbor Area Special Community, in that the replacement dwelling is of modest scale, and is characterized by clean lines, low pitched roofs, wood construction and wood shingle siding (Added by staff at August 21, 2009 Zoning Administrator Hearing).

4. **That the project conforms with the public access, recreation, and visitor-serving policies, standards and maps of the General Plan and Local Coastal Program land use plan, specifically Chapter 2: figure 2.5 and Chapter 7, and, as to any development between and nearest public road and the sea or the shoreline of any body of water located within the coastal zone, such development is in conformity with the public access and public recreation policies of Chapter 3 of the Coastal Act commencing with section 30200.**

This finding can be made, in that the project site is not located between the shoreline and the first public road. Consequently, the replacement dwelling will not interfere with public access to the beach, ocean, or any nearby body of water. Further, the project site is not identified as a priority acquisition site in the County Local Coastal Program.

5. That the proposed development is in conformity with the certified local coastal program.

This finding can be made, in that the structure is sited and designed to be visually compatible, in scale with, and integrated with the character of the surrounding neighborhood. Additionally, residential uses are allowed uses in the R-1-3.5 (Single-Family Residential – 3,500 square foot minimum parcel size) zone district of the area, as well as the General Plan and Local Coastal Program land use designation. Developed parcels in the area contain one and two-story single-family dwellings. Size and architectural styles vary widely in the area, and the design submitted is not inconsistent with the existing range. Further,

Development Permit Findings

- 1. 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 result in inefficient or wasteful use of energy, and will not be materially injurious to properties or improvements in the vicinity.**

The project is located in an area designated for Residential uses. Construction will comply with prevailing building technology, the Uniform Building Code, and the County Building ordinance to insure the optimum in safety and the conservation of energy and resources. The proposed replacement dwelling will not deprive adjacent properties or the neighborhood of light, air, or open space, in that the second story portion of the new dwelling is set back from the ground floor at the rear of the lot. A variance is included in this application in order to reduce the required rear yard and garage setbacks to accommodate a modestly sized dwelling on a substandard lot.

Given the required setbacks and the 40-foot lot depth, a dwelling would not be feasible on this property without variances to site standards for the R-1-3.5 zone district.

- 2. That the proposed location of the project and the conditions under which it would be operated or maintained will be consistent with all pertinent County ordinances and the purpose of the zone district in which the site is located.**

While the existing legal parcel of record is substandard with respect to parcel size under the R-1-3.5 (Single-family residential – 3,500 square foot minimum lot size) zone district, the proposed residential development represents an improvement to the existing footprint. The proposed replacement house will be smaller in area than the existing dwelling and the degree of encroachment into required setbacks will be significantly reduced on three sides. The proposed replacement house will comply with required lot coverage, while the existing dwelling does not.

- 3. That the proposed use is consistent with all elements of the County General Plan and with any specific plan which has been adopted for the area.**

The proposed residential development will not adversely impact the light, solar opportunities, air, and/or open space available to other structures or properties in that the replacement dwelling will not adversely shade adjacent properties. The proposed house, while encroaching into required setbacks for the zone district, is an improvement over the longstanding non-conformity represented by the existing house. The new structure will be pulled back from three sides of the property, will comply with the required lot coverage and floor area ratio, and will provide the required on-site parking.

The proposed residential development will not be improperly proportioned to the parcel size or the character of the neighborhood as specified in General Plan Policy 8.6.1 (Maintaining a Relationship Between Structure and Parcel Sizes), in that, other than the garage and rear yard setback, the proposed residential addition complies with the site standards for the R-1-3.5 zone district (including lot coverage, floor area ratio, height, and number of stories) and will result in a structure consistent with a design that could be approved on any similarly sized lot in the vicinity. The proposed dwelling is very modest in size and the variances are necessary to provide economic use of the legal parcel.

Due to the size of the subject parcel, the proposed design and configuration is the most feasible and least impactful to the surrounding neighborhood.

4. **That the proposed use will not overload utilities and will not generate more than the acceptable level of traffic on the streets in the vicinity.**

This finding can be made in that the proposed residential development is to be constructed on an existing developed lot and the project does not include any additional bedrooms. No additional trip generation will result from the proposal.

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, land use intensities, and dwelling unit densities of the neighborhood.**

This finding can be made, in that the proposed residential development is located in a mixed neighborhood containing a variety of architectural styles, and the construction is consistent with the land use intensity and density of the neighborhood. Through the use of a low-pitched roofline, carriage-style garage door, wood shingles and other design elements, the replacement house enhances and complements the relationship among the dwellings in the neighborhood.

6. **The proposed development project is consistent with the Design Standards and Guidelines (sections 13.11.070 through 13.11.076), and any other applicable requirements of this chapter.**

This finding can be made, in that the proposed replacement dwelling will be of an appropriate scale and type of design that will enhance the aesthetic qualities of the surrounding properties and will not reduce or visually impact available open space in the surrounding area. The size, scale, and location of the proposed development is consistent with the surrounding properties in the neighborhood.

EXHIBIT [B 1

Variance Findings

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.**

Due to the small size of the subject parcel, it is not possible to construct a reasonably sized house without encroaching into the rear setback and reducing the 20-foot setback to the garage. A variance is necessary to construct a replacement dwelling, as the required setbacks would leave a building envelope only 10 feet in depth. The strict application of the zoning ordinance with respect to setbacks would deprive the property owner of a reasonable amount of living space for their residence, a privilege enjoyed by other properties in the area (*Revised by Zoning Administrator on August 21, 2009*).

2. **That the granting of the 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.**

The granting of the 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 in that the existing structure has not been detrimental to public health, safety or welfare and the replacement house is more conforming than the existing. The existing dwelling has occupied the site over 85 years, extending to within inches of the rear property line and non-conforming with respect to lot coverage as well as front and rear yard setbacks. The existing structure is significantly nonconforming in that it is located less than 5 feet from the adjacent dwelling to the east. The replacement dwelling eliminates and/or improves all of the existing areas of non-conformance and results in a house that is more than 100 square feet smaller than the house that has historically occupied the site.

Although the replacement dwelling adds a second story where none previously existed, the second floor is setback an additional five feet and allows the adjacent properties adequate access to light and air. The proposed home will be seven feet shorter than the zoning ordinance allows.

3. **That the granting of such variances 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.**

The majority of the dwellings on this block of Carmel Street were developed prior to the adoption of the zone district standards. Many of the older dwellings on the block have been constructed within the front yard setbacks and the adjacent house to the east exceeds the standards for lot coverage in addition to setback encroachments. Thus, many of the structures on this block of Carmel Street do not conform to this zone district site development standard. Any repairs or replacement of exterior elements of many of these structures will require a variance approval. Therefore, granting of this variance will not constitute a grant of special privileges inconsistent with the limitations upon the surrounding neighbors. The granting of the variance to reduce the rear yard and garage setbacks will provide a reasonable amount of living space for a residence. Denial of the proposed variance would result in a hardship for the property owner by extinguishing the ability to replace the existing substandard house (*Revised by Zoning Administrator on August 21, 2009*).

EXHIBIT 1B 4

Conditions of Approval

- Exhibit A: Project plans, 3 sheets, prepared by Dana Jones, undated, *revised 8-3-09*, Landscape Plan, 1 sheet, prepared by Ellen cooper, dated 3-5-09, *revised 7-29-09*, Topographic Survey Map, prepared by Cary Edmundson & Associates, dated November 5, 2008 (*revised by Staff at August 21, 2009 Zoning Administrator Hearing*).
- I. This permit authorizes the demolition of an existing one-story single family dwelling and the construction of a two-story 800 square foot, *one-bedroom* single family dwelling, *non-habitable basement*, and attached garage (*revised by Zoning Administrator on August 21, 2009*). This approval does not confer legal status on any existing structure(s) or existing use(s) on the subject property that are not specifically authorized by this permit. Prior to exercising any rights granted by this permit including, without limitation, any construction or site disturbance, the applicant/owner shall:
- A. Sign, date, and return to the Planning Department one copy of the approval to indicate acceptance and agreement with the conditions thereof.
 - B. Obtain a Demolition Permit from the Santa Cruz County Building Official.
 - 1. Demolition must comply with all requirements of the Monterey Bay Unified Air Pollution Control District.
 - C. Obtain a Building Permit from the Santa Cruz County Building Official.
 - 1. Any outstanding balance due to the Planning Department must be paid prior to making a Building Permit application. Applications for Building Permits will not be accepted or processed while there is an outstanding balance due.
 - D. Obtain a Grading Permit from the Santa Cruz County Building Official.
 - E. Obtain an Encroachment Permit from the Department of Public Works for all off-site work performed in the County road right-of-way.
 - 1. No landscaping shall be permitted to encroach into the right-of-way such that public parking is impacted.
 - F. Submit proof that these conditions have been recorded in the official records of the County of Santa Cruz (Office of the County Recorder) within 30 days from the effective date of this permit.
- II. Prior to issuance of a Building Permit the applicant/owner shall:
- A. Submit final architectural plans for review and approval by the Planning Department. The final plans shall be in substantial compliance with the plans

marked Exhibit "A" on file with the Planning Department. Any changes from the approved Exhibit "A" for this development permit on the plans submitted for the Building Permit must be clearly called out and labeled by standard architectural methods to indicate such changes. Any changes that are not properly called out and labeled will not be authorized by any Building Permit that is issued for the proposed development.

The final plans shall include the following additional information:

1. One elevation shall indicate materials and colors as they were approved by this Discretionary Application.
 2. Drainage, and erosion control plans. Erosion control plans must include fencing at the perimeter of the dripline of the plum tree, per the project arborist's recommendations.
 3. Plans shall include a note stating that the project arborist shall be onsite during the excavation necessary for the construction of the patio to ensure adequate protection of the tree.
 4. The building plans must include a roof plan and a surveyed contour map of the ground surface, superimposed and extended to allow height measurement of all features. Spot elevations shall be provided at points on the structure that have the greatest difference between ground surface and the highest portion of the structure above. This requirement is in addition to the standard requirement of detailed elevations and cross-sections and the topography of the project site which clearly depict the total height of the proposed structure. Maximum height is 21 feet as shown on Exhibit A.
 5. The second floor of the dwelling must conform to the required 15-foot front yard setback.
 6. Details showing compliance with fire department requirements.
 7. *The basement shall be less than 7'-0" as defined by County Code. No bathroom, kitchens, food preparation areas, or mechanical heating are allowed. No separate electrical meter is permitted. The space may have insulation, sheetrock, utility sink, water heater, and washer/dryer. Two-inch maximum drain diameter allowed (added by Zoning Administrator on August 21, 2009).*
 8. *Delete the emergency escape hatch serving the basement unless required by Building Code (added by Zoning Administrator on August 21, 2009).*
- B. Submit four copies of the approved Discretionary Permit with the Conditions of Approval attached. The Conditions of Approval shall be recorded prior to

submittal, if applicable.

- C. Meet all requirements of and pay Zone 5 drainage fees to the County Department of Public Works, Stormwater Management. Drainage fees will be assessed on the net increase in impervious area.
 - D. Meet all requirements and pay any applicable plan check fee of the Central Fire Protection District.
 - E. Submit 3 copies of a soils report prepared and stamped by a licensed Geotechnical Engineer. *A review fee will be required (Added by Zoning Administrator on August 21, 2009).*
 - F. Provide required off-street parking for two (2) cars. Parking spaces must be 8.5 feet wide by 18 feet long and must be located entirely outside vehicular rights-of way. Parking must be clearly designated on the plot plan.
 - G. Submit a written statement signed by an authorized representative of the school district in which the project is located confirming payment in full of all applicable developer fees and other requirements lawfully imposed by the school district.
 - H. *Complete and record a Declaration to Maintain the Non-Habitable Basement. You may not alter the wording of this declaration. Follow the instructions to record and return the form to the Planning Department (added by staff at August 21, 2009 Zoning Administrator Hearing).*
- III. All construction shall be performed according to the approved plans for the Building Permit. Prior to final building inspection, the applicant/owner must meet the following conditions:
- A. All site improvements shown on the final approved Building Permit plans shall be installed.
 - B. All inspections required by the building permit shall be completed to the satisfaction of the County Building Official.
 - C. The project must comply with all recommendations of the approved soils reports.
 - D. Once plans have been approved by all agencies, provide a plan review letter from the soils engineer referencing the final revised drawings and stating that they conform to the provided recommendations.
 - E. Provide a letter from the project arborist, which states that the necessary root pruning and other tree protection measures are in conformance with the arborist's recommendations. *In the event that either of the two plum trees dies, a replacement tree, which has been approved by Environmental Planning staff, must be planted in substantially the same location. (Added by Zoning*

Administrator on August 21, 2009).

- F. Pursuant to Sections 16.40.040 and 16.42.100 of the County Code, if at any time during site preparation, excavation, or other ground disturbance associated with this development, any artifact or other evidence of an historic archaeological resource or a Native American cultural site is discovered, the responsible persons shall immediately cease and desist from all further site excavation and notify the Sheriff-Coroner if the discovery contains human remains, or the Planning Director if the discovery contains no human remains. The procedures established in Sections 16.40.040 and 16.42.100, shall be observed.

IV. Operational Conditions

- A. In the event that future County inspections of the subject property disclose noncompliance with any Conditions of this approval or any violation of the County Code, the owner shall pay to the County the full cost of such County inspections, including any follow-up inspections and/or necessary enforcement actions, up to and including permit revocation.
- B. *To minimize noise, dust and nuisance impacts on surrounding properties to insignificant levels during construction, the owner/applicant shall or shall have the project contractor comply with the following measures during all construction work (added by staff at the Zoning Administrator's hearing on 8/21/09):*
1. *Limit all construction to the time between 8:00 am and 6:00 pm weekdays, excluding holidays*

- V. As a condition of this development approval, the holder of this development approval ("Development Approval Holder"), is required to defend, indemnify, and hold harmless the COUNTY, its officers, employees, and agents, from and against any claim (including attorneys' fees), against the COUNTY, its officers, employees, and agents to attack, set aside, void, or annul this development approval of the COUNTY or any subsequent amendment of this development approval which is requested by the Development Approval Holder.

- A. COUNTY shall promptly notify the Development Approval Holder of any claim, action, or proceeding against which the COUNTY seeks to be defended, indemnified, or held harmless. COUNTY shall cooperate fully in such defense. If COUNTY fails to notify the Development Approval Holder within sixty (60) days of any such claim, action, or proceeding, or fails to cooperate fully in the defense thereof, the Development Approval Holder shall not thereafter be responsible to defend, indemnify, or hold harmless the COUNTY if such failure to notify or cooperate was significantly prejudicial to the Development Approval Holder.
- B. Nothing contained herein shall prohibit the COUNTY from participating in the defense of any claim, action, or proceeding if both of the following occur:

2. COUNTY defends the action in good faith.
- C. Settlement. The Development Approval Holder shall not be required to pay or perform any settlement unless such Development Approval Holder has approved the settlement. When representing the County, the Development Approval Holder shall not enter into any stipulation or settlement modifying or affecting the interpretation or validity of any of the terms or conditions of the development approval without the prior written consent of the County.
- D. Successors Bound. "Development Approval Holder" shall include the applicant and the successor(s) in interest, transferee(s), and assign(s) of the applicant.

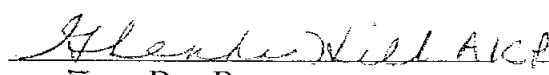
Minor variations to this permit which do not affect the overall concept or density may be approved by the Planning Director at the request of the applicant or staff in accordance with Chapter 18.10 of the County Code.

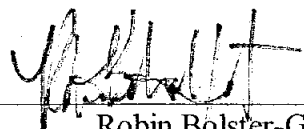
Please note: This permit expires three years from the effective date listed below unless a building permit (or permits) is obtained for the primary structure described in the development permit (does not include demolition, temporary power pole or other site preparation permits, or accessory structures unless these are the primary subject of the development permit). Failure to exercise the building permit and to complete all of the construction under the building permit, resulting in the expiration of the building permit, will void the development permit, unless there are special circumstances as determined by the Planning Director.

Approval Date: August 21, 2009

Effective Date: September 4, 2009

Expiration Date: September 4, 2012


For Don Bussey
Deputy Zoning Administrator


Robin Bolster-Grant
Project Planner

Appeals: Any property owner, or other person aggrieved, or any other person whose interests are adversely affected by any act or determination of the Zoning Administrator, may appeal the act or determination to the Planning Commission in accordance with chapter 18.10 of the Santa Cruz County Code.

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 CEQA for the reason(s) which have been specified in this document.

Application Number: 09-0124

Assessor Parcel Number: 027-111-33

Project Location: 821 Carmel Street

Project Description: Demolition of existing single-family residence and construction of a new two-story single-family dwelling and attached garage.

Person or Agency Proposing Project: John Groat

Contact Phone Number: (408) 742-0789

- 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).

Specify type:

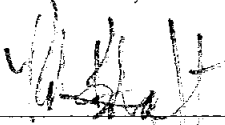
E. ☒ Categorical Exemption

Specify type: 15303. New Construction or Conversion of Small Structures

F. **Reasons why the project is exempt:**

Replacement of an existing single-family dwelling

In addition, none of the conditions described in Section 15300.2 apply to this project.

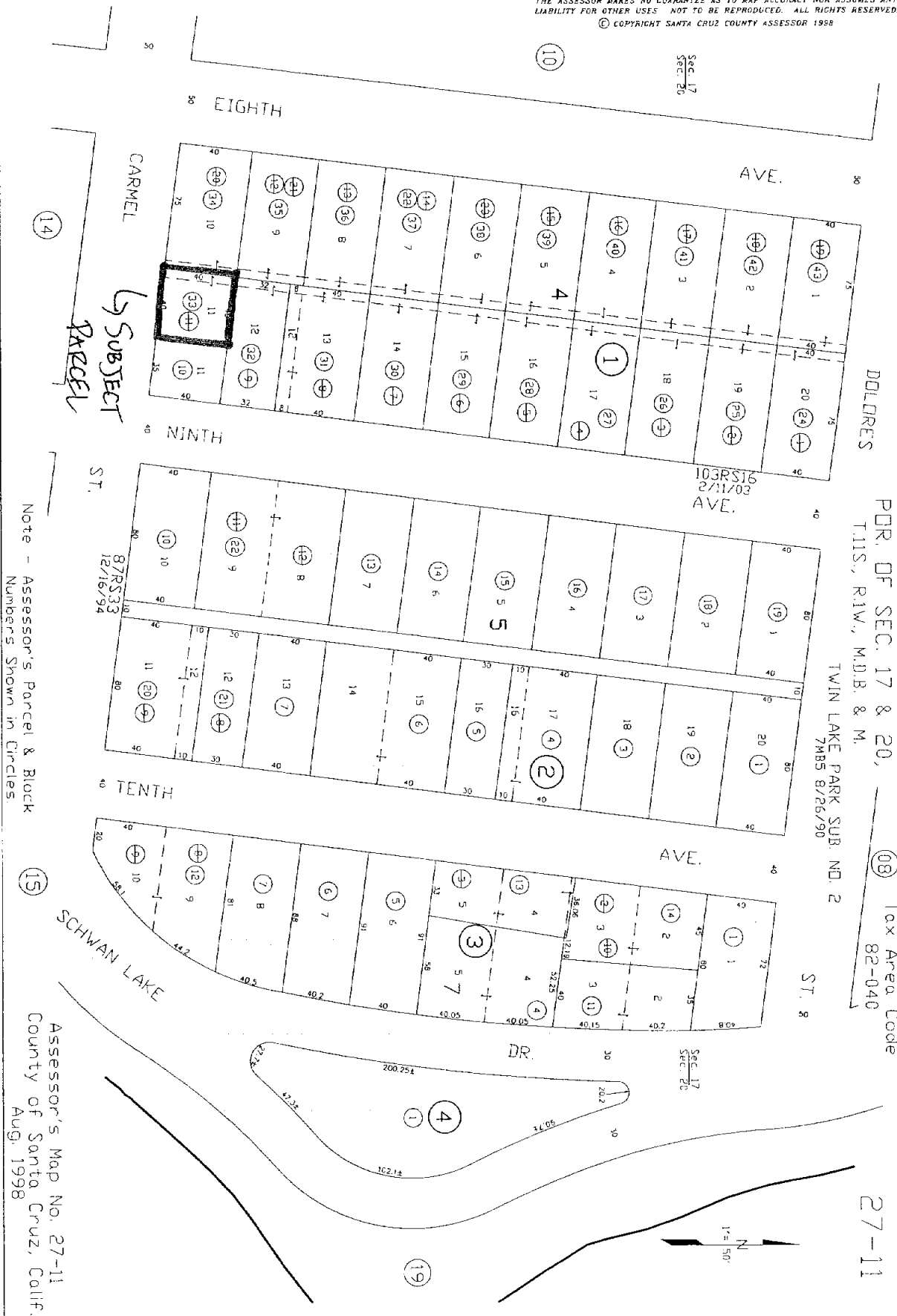


Robin Bolster-Grant, Project Planner

Date: 8/21/09

FOR TAX PURPOSES ONLY

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 LIABILITY FOR OTHER USES. NOT TO BE REPRODUCED. ALL RIGHTS RESERVED.
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Note - Assessor's Parcel & Block
 Numbers Shown in Circles

Assessor's Map No. 27-11
 County of Santa Cruz, Calif.
 Aug. 1998

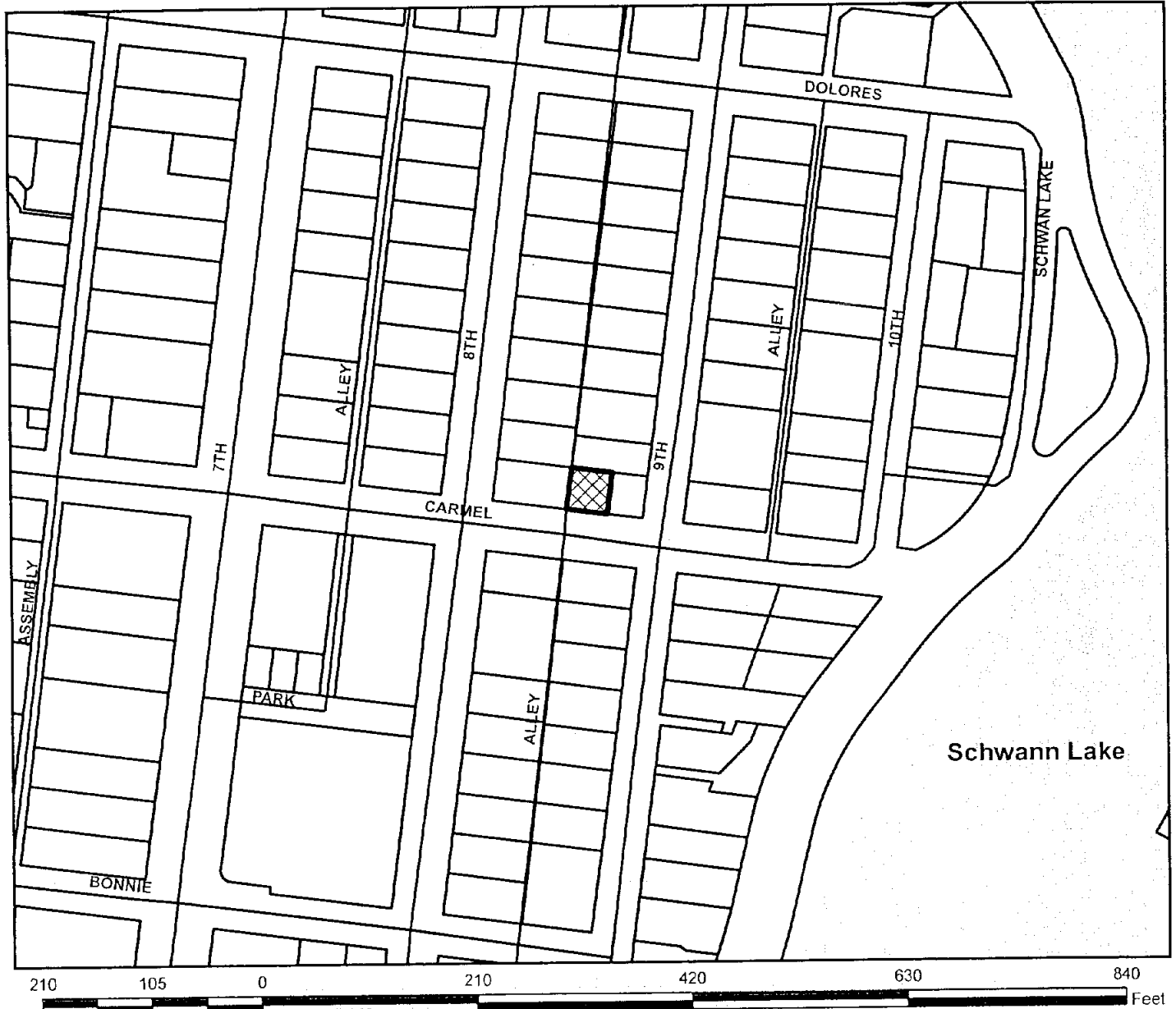
POR. OF SEC. 17 & 20,
 T.11S, R.1W, M.D.B. & M.
 TWIN LAKE PARK SUB. NO. 2
 7MB5 8/26/90

08 Tax Area Code
 82-040





27-11

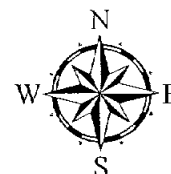


Location Map



LEGEND

-  APN: 027-111-33
-  Assessors Parcels
-  Streets
-  Lakes

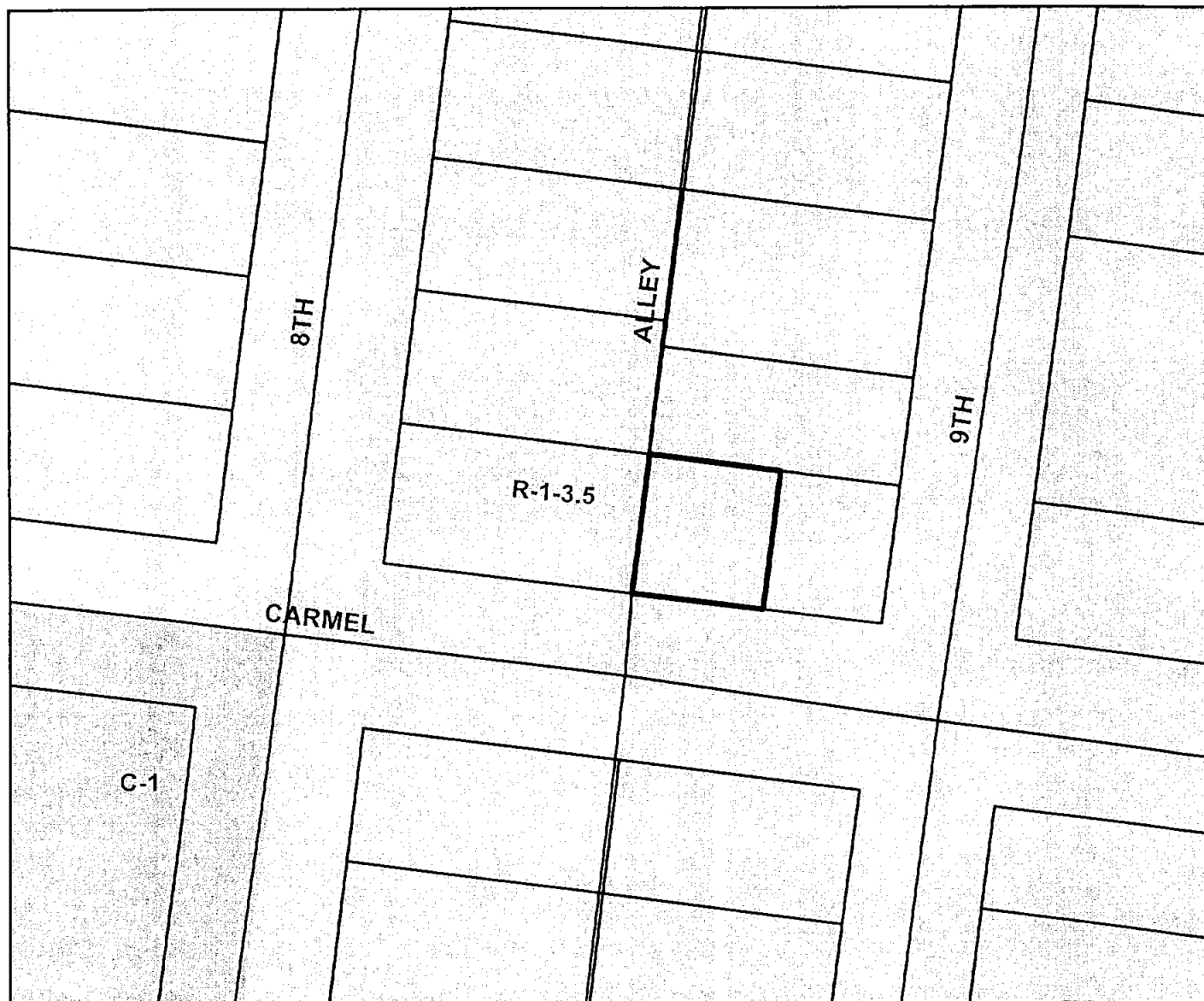


Map Created by
County of Santa Cruz
Planning Department
April 2009

EXHIBIT B
EXHIBIT B



Zoning Map



LEGEND



APN: 027-111-33



Assessors Parcels

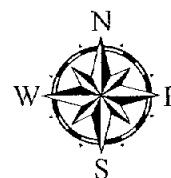


Streets

RESIDENTIAL-SINGLE FAMILY



COMMERCIAL-NEIGHBORHOOD



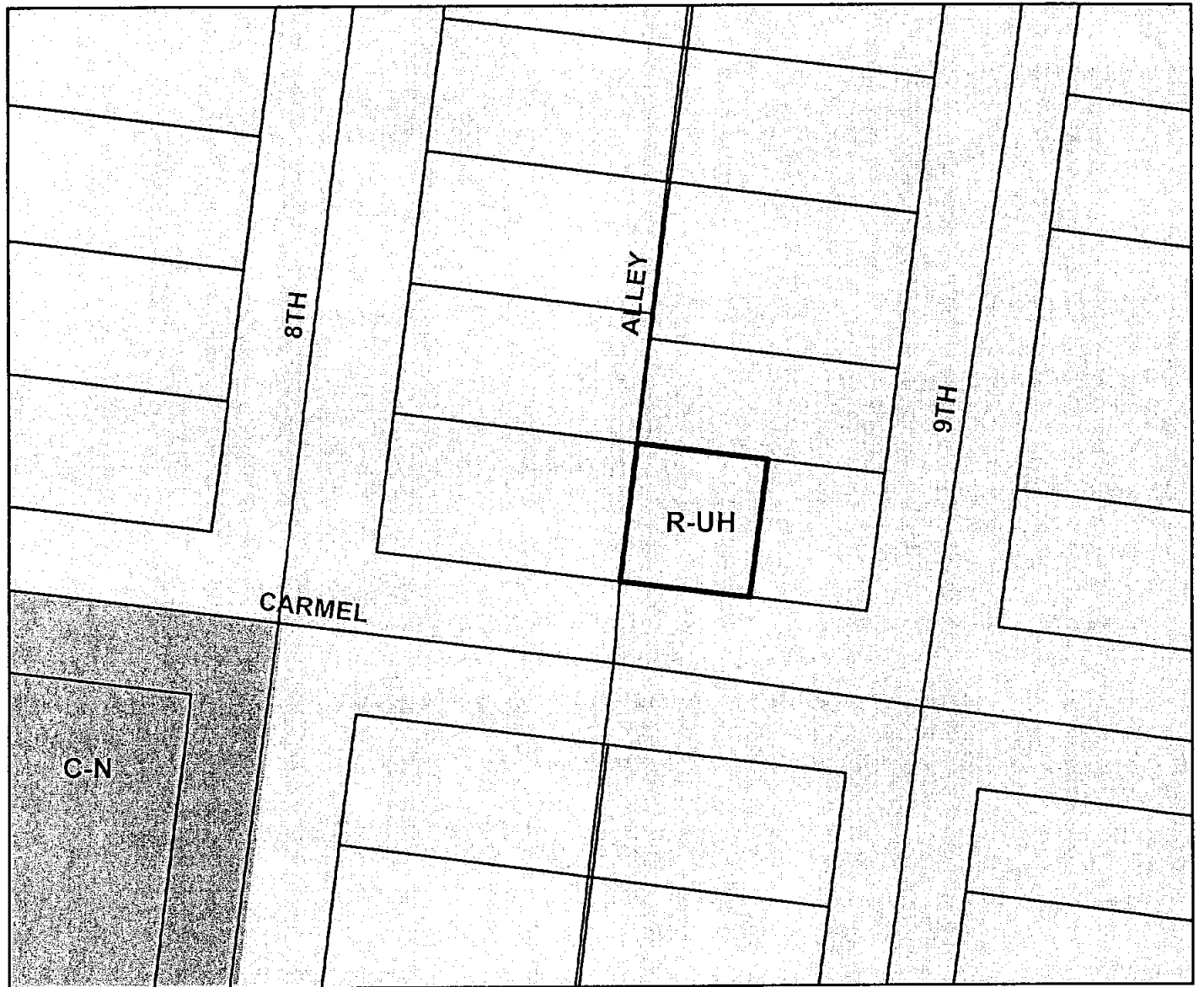
Map Created by
County of Santa Cruz
Planning Department
April 2009

EXHIBIT 1B






EXHIBIT E

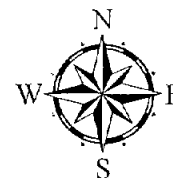


General Plan Designation Map



LEGEND

-  APN: 027-111-33
-  Assessors Parcels
-  Streets
-  Residential - Urban High Density
-  Commercial-Neighborhood



Map Created by
County of Santa Cruz
Planning Department
April 2009

EXHIBIT JB

EXHIBIT E

C O U N T Y O F S A N T A C R U Z
DISCRETIONARY APPLICATION COMMENTS

Project Planner: Robin Bolster
Application No.: 09-0124
APN: 027-111-33

Date: June 17, 2009
Time: 17:34:44
Page: 1

Environmental Planning Completeness Comments

===== REVIEW ON APRIL 29, 2009 BY ANTONELLA GENTILE =====

1. Provide recommendations from the landscape architect for protection of the existing plum tree. Include a brief analysis of how to mitigate for removal of the log barrier.

===== UPDATED ON JUNE 12, 2009 BY ANTONELLA GENTILE =====

Project complete per Environmental Planning.

Environmental Planning Miscellaneous Comments

===== REVIEW ON APRIL 29, 2009 BY ANTONELLA GENTILE =====

Miscellaneous comments:

1. Although this parcel is mapped for the presence of the Zayante band-winged grasshopper, the species is not expected to occur here due to the presence of existing development and the lack of proper habitat.

2. The existing plum tree is misrepresented on the plans in that at breast height (4.5'), it is a multi-trunk tree rather than an 18" diameter tree.

3. A soils report will be required for this project during the building permit application process.

4. Conditions will be added once all completeness items have been resolved.

===== UPDATED ON JUNE 12, 2009 BY ANTONELLA GENTILE =====

Prior to building permit approval:

1. Submit a soils report prepared by a licensed geotechnical engineer for review and acceptance by Environmental Planning.

2. Prepare plans in conformance with all recommendations in the soils report.

3. Include a note on the plans referencing the soils report and stating that the project shall conform to its recommendations.

4. Once plans have been approved by all agencies, provide a plan review letter from the soils engineer referencing the final revised drawings and stating that they conform to the provided recommendations.

5. Provide an erosion control plan that includes fencing at the dripline of the plum tree per the arborist's recommendations.

6. Include a note on the plans that states that the project arborist shall be onsite during excavation for the patio to observe all necessary root pruning.

Prior to building permit final:

Discretionary Comments - Continued

Project Planner: Robin Bolster
Application No.: 09-0124
APN: 027-111-33

Date: June 17, 2009
Time: 17:34:44
Page: 2

1. Provide a letter from the soils engineer stating that all aspects of the project have been completed in conformance with the recommendations provided in the soils report.
2. Provide a letter from the project arborist stating that root pruning was conducted in conformance with her recommendations.

Code Compliance Completeness Comments

LATEST COMMENTS HAVE **NOT YET** BEEN SENT TO PLANNER FOR THIS AGENCY

===== REVIEW ON APRIL 9, 2009 BY KEVIN M FITZPATRICK =====

NO COMMENT

the demolition of the existing house will resolve the code violation. (KMF)

Code Compliance Miscellaneous Comments

LATEST COMMENTS HAVE **NOT YET** BEEN SENT TO PLANNER FOR THIS AGENCY

===== REVIEW ON APRIL 9, 2009 BY KEVIN M FITZPATRICK =====

NO COMMENT

As this is a new owner and is working on resolving the violation, code compliance will not put any time constraints on the project. All due enforcement costs will have to be paid before an expungment of any recordations will be done. (KMF)

Dpw Drainage Completeness Comments

LATEST COMMENTS HAVE **NOT YET** BEEN SENT TO PLANNER FOR THIS AGENCY

===== REVIEW ON APRIL 23, 2009 BY GERARDO VARGAS ===== Application 09-0124 has been approved for the discretionary stage in regards to drainage. Please see miscellaneous comments to be addressed at the building application stage.

Please call the Dept. of Public Works, Stormwater Management Section, from 8:00 am to 12:00 noon if you have questions.

Dpw Drainage Miscellaneous Comments

LATEST COMMENTS HAVE **NOT YET** BEEN SENT TO PLANNER FOR THIS AGENCY

===== REVIEW ON APRIL 23, 2009 BY GERARDO VARGAS ===== 1. Specify the ultimate surface material to be use for the patio, and parking area(s).

2. Provide a typical cross section detail of the of the patio and parking area(s).

3. Please delineate the semi-permeable surfaces on the plan by using different hatching

A drainage impact fee will be assessed on the net increase in impervious area. The fees are currently \$1.03 per square foot, and are assessed upon permit issuance.

Discretionary Comments - Continued

Project Planner: Robin Bolster
Application No.: 09-0124
APN: 027-111-33

Date: June 17, 2009
Time: 17:34:44
Page: 3

Reduced fees are assessed for semi-pervious surfacing to offset costs and encourage more extensive use of these materials.

You may be eligible for fee credits for pre-existing impervious areas to be demolished. To be entitled for credits for pre-existing impervious areas, please submit documentation of permitted structures to establish eligibility. Documentations such as assessor-s records, surveys records, or other official records that will help establish and determine the dates they were built, the structure foot-print, or to confirm if a building permiwas previously issued is accepted.

Please call the Dept. of Public Works, Stormwater Management Section, from 8:00 am to 12:00 noon if you have questions.

Dpw Driveway/Encroachment Completeness Comments

===== REVIEW ON APRIL 17, 2009 BY DEBBIE F LOCATELLI =====
Please see Compliance issues. ===== UPDATED ON MAY 28, 2009 BY DEBBIE F LOCATELLI =====
Compliance issues addressed.

Dpw Driveway/Encroachment Miscellaneous Comments

===== REVIEW ON APRIL 17, 2009 BY DEBBIE F LOCATELLI =====
Driveway to conform to County Design Criteria Standards. Encroachment section shall require the frontage to be paved a width of 9 feet, to accommodate permit parking and swale.
Encroachment permit required for all off-site work in the County road right-of-way.
Any landscaping proposed shall be maintained by the owners year round to prevent encroachment onto the county maintained road. The landscaping shall be included in the encroachment permit for work within the county right-of-way.
===== UPDATED ON MAY 28, 2009 BY DEBBIE F LOCATELLI =====
Issues above addressed.

Please condition permit to include the following: Encroachment permit required at the time of building permit submittal for work completed within the county right-of-way.

Dpw Road Engineering Completeness Comments

===== REVIEW ON APRIL 22, 2009 BY ANWARBEG MIRZA =====
1. The driveway must meet County of Santa Cruz standards in the Design Criteria. Please refer the correct figure and show in plan view. Please refer to the SC Design Criteria for references. Click for the link below: <http://www.dpw.co.santa-cruz.ca.us/DESIGNCRITERIA.pdf> ===== UPDATED ON JUNE 11, 2009 BY ANWARBEG MIRZA =====
Complete.

Dpw Road Engineering Miscellaneous Comments

===== REVIEW ON APRIL 22, 2009 BY ANWARBEG MIRZA =====

EXHIBIT 1B

Discretionary Comments - Continued

Project Planner: Robin Bolster
Application No.: 09-0124
APN: 027-111-33

Date: June 17, 2009
Time: 17:34:44
Page: 4

1. Comply with encroachment requirements.

===== UPDATED ON JUNE 11, 2009 BY ANWARBEG MIRZA =====
For building application, show driveway Fig: DW-5 in plan view.

Dpw Sanitation Completeness Comments

===== REVIEW ON APRIL 9, 2009 BY CARMEN M LOCATELLI =====
Sewer service is currently available.

Dpw Sanitation Miscellaneous Comments

===== REVIEW ON APRIL 9, 2009 BY CARMEN M LOCATELLI =====
Proposed location of on-site sewer lateral(s), clean-out(s), and connection(s) to existing public sewer must be shown on the plot plan of the building permit application.
Existing lateral(s) must be properly abandoned (including inspection by District) prior to issuance of demolition permit or relocation or disconnection of structure. An abandonment permit for disconnection work must be obtained from the District. Show all existing and proposed plumbing fixtures on floor plans of building application.

COUNTY OF SANTA CRUZ
INTER-OFFICE CORRESPONDENCE

DATE: April 22, 2009
To: Robin Bolster-Grant Project Planner
From: Steve Guiney, Planning Department Liaison to the Redevelopment Agency
SUBJECT: Application 09-0124, Demo & rebuild an SFD, 1st routing, APN 027-111-33, 821 Carmel Street, Live Oak

The applicant is proposing to demolish an existing single-family dwelling and construct an 800 square foot, two-story single-family dwelling. The proposal requires a coastal development permit and variances to reduce the required rear yard from 15 feet to about 5 feet and the required 20 foot garage setback to 16 feet 3 inches. The property is located on the north side of Carmel Street between 8th and 9th Avenues, at 821 Carmel Street...

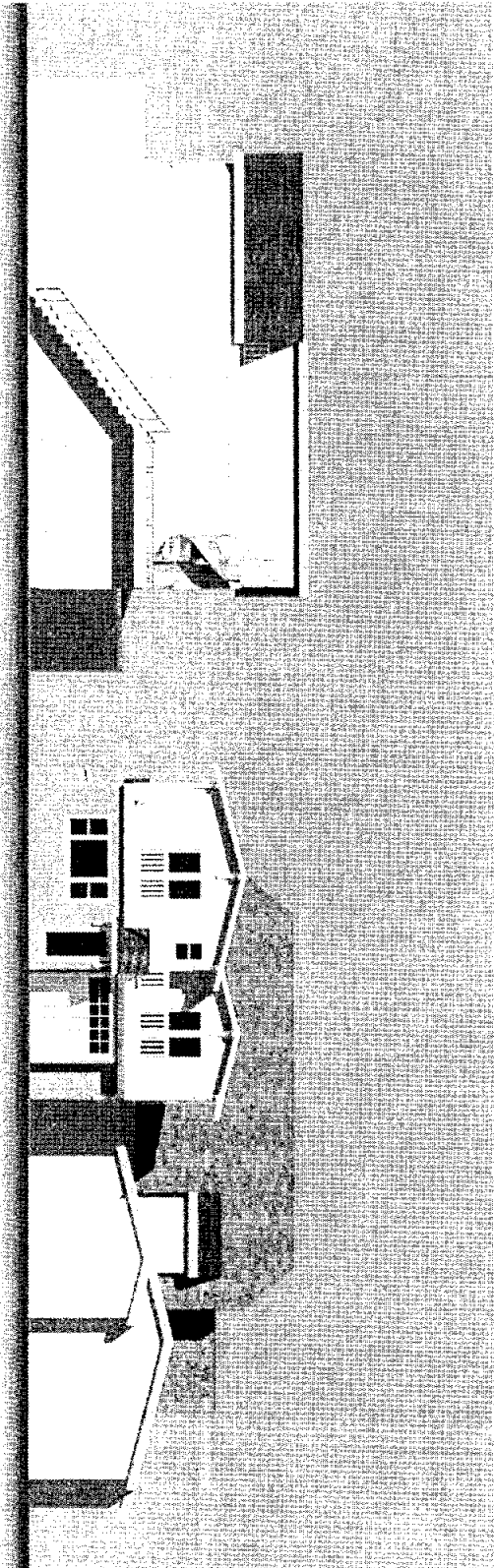
The proposal includes removal of an existing log barrier that extends into the public right-of-way and the addition of landscaping in that area. The proposed landscaping encroachment into the public right-of-way should be limited such that public parking is available completely off of the paved roadway.

The issue referenced above should be evaluated as part of this application and/or addressed by conditions of approval. RDA does not need to see future routings of this project unless there are changes or more information provided relevant to RDA's comments. RDA appreciates this opportunity to comment. Thank you.

cc: Rodolfo Rivas, DPW Road Engineering
Paul Rodrigues, & Betsey Lynberg, RDA
John Leopold, District Supervisor & Steve Kennedy, Analyst

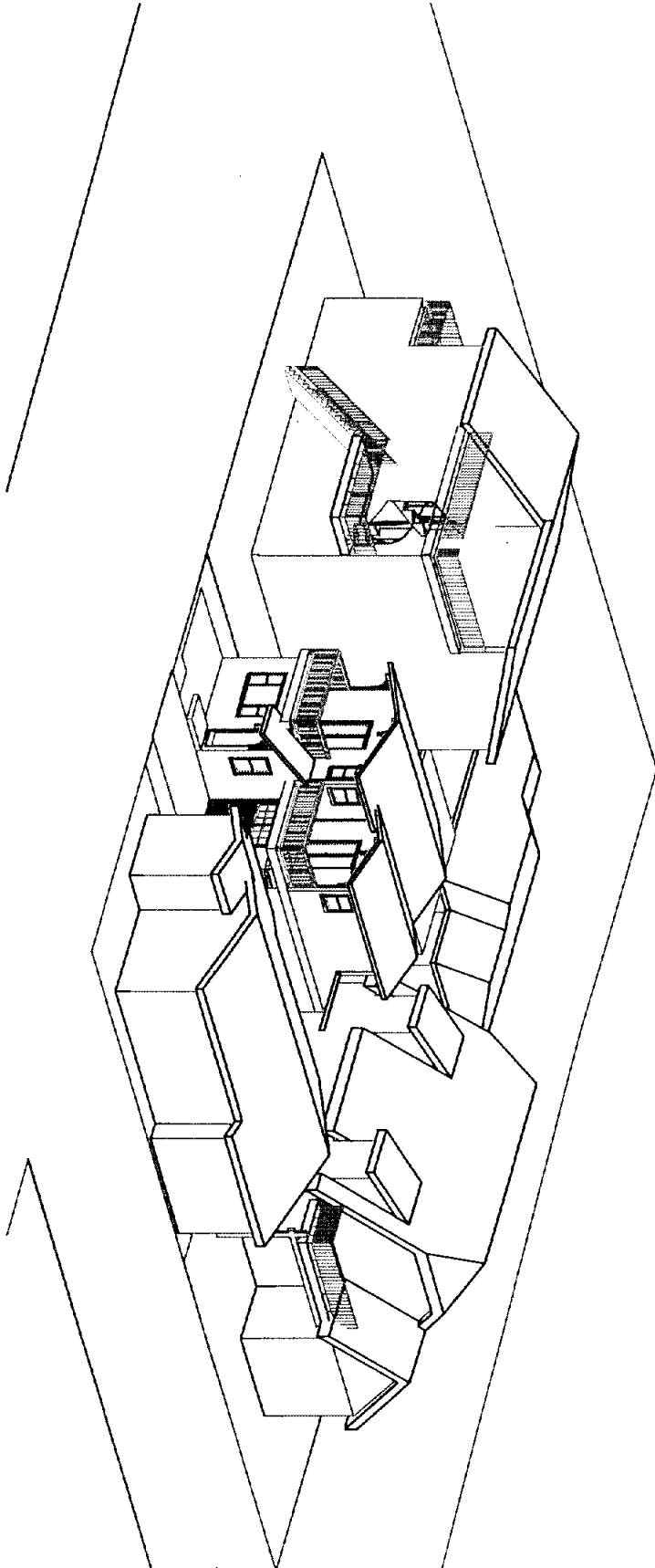
EXHIBIT B

EXHIBIT F



©2009 ArchiGraphics

Groat streetscape
821 Carmel Street, Santa Cruz
Designer: Dana Jones

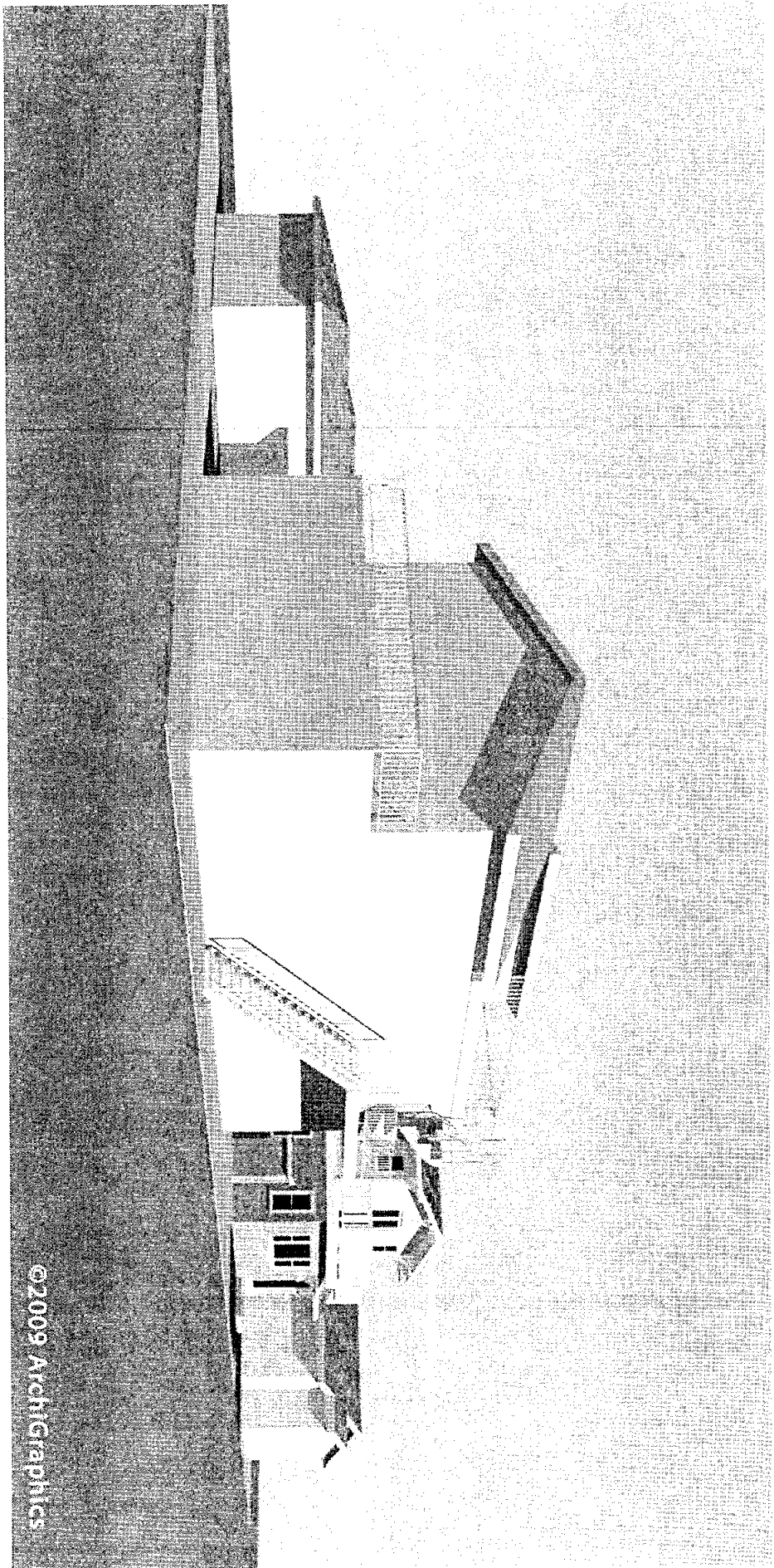


Groat Axonometric

821 Carmel Street, Santa Cruz

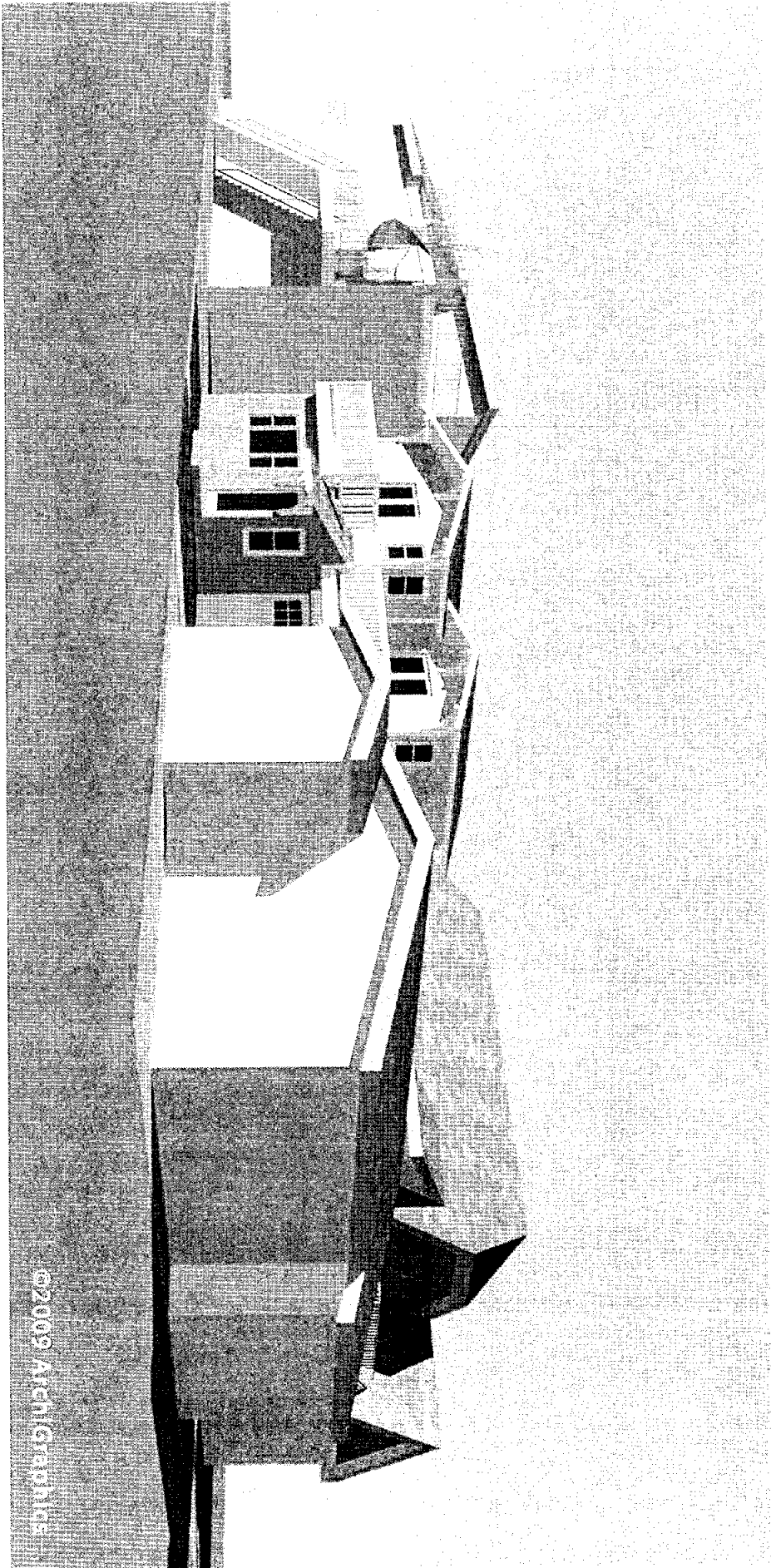
Axonometric: ArchiGraphics

March 20, 2009



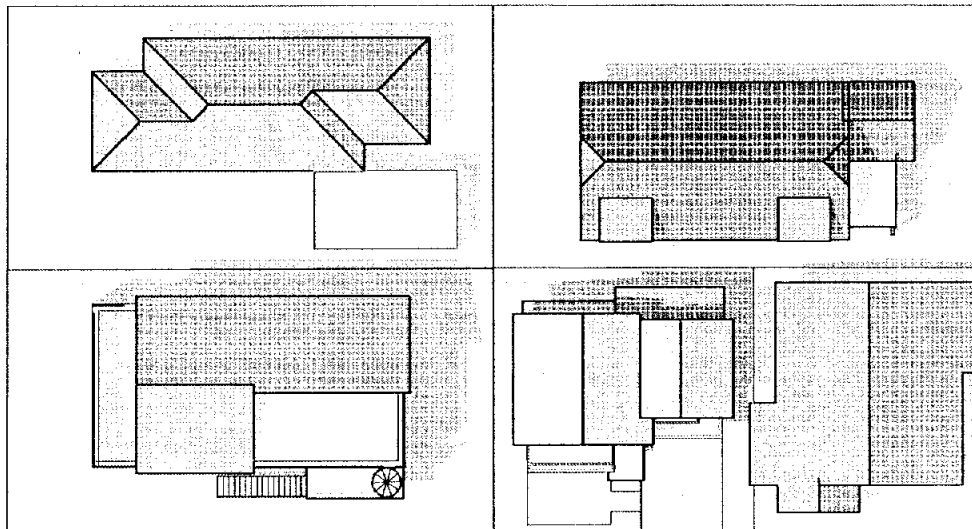
©2009 ArchiGraphics

Groat residence perspective view 1
Designer: Dana Jones

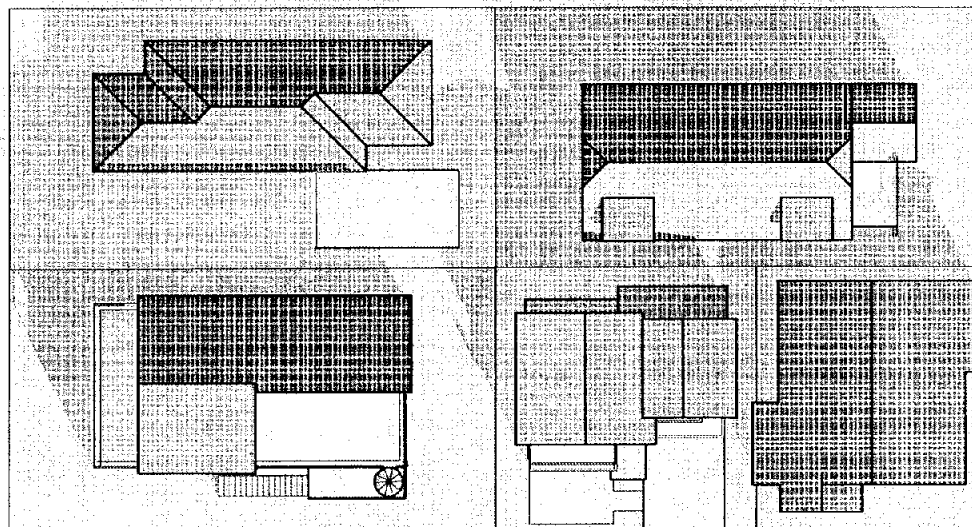


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Groat residence perspective view 2
Designer: Dana Jones

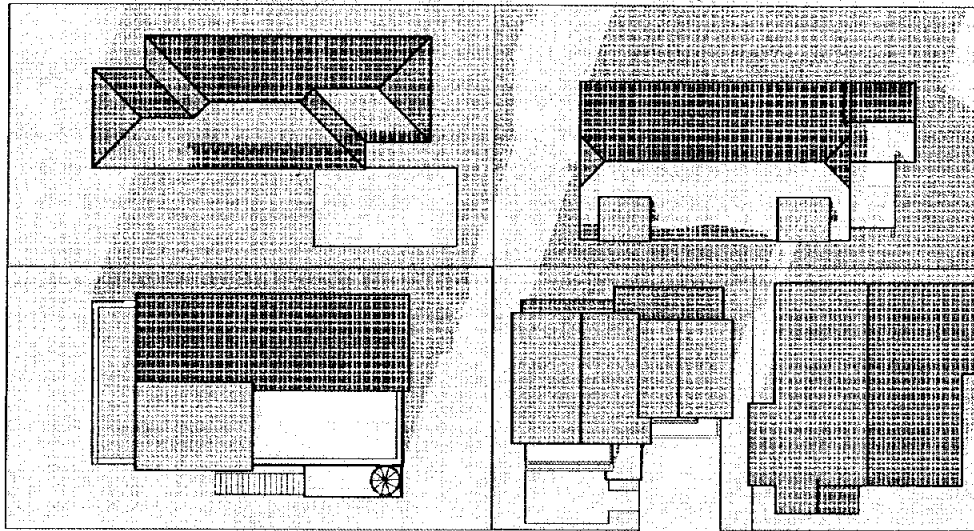


June 21, 2 pm

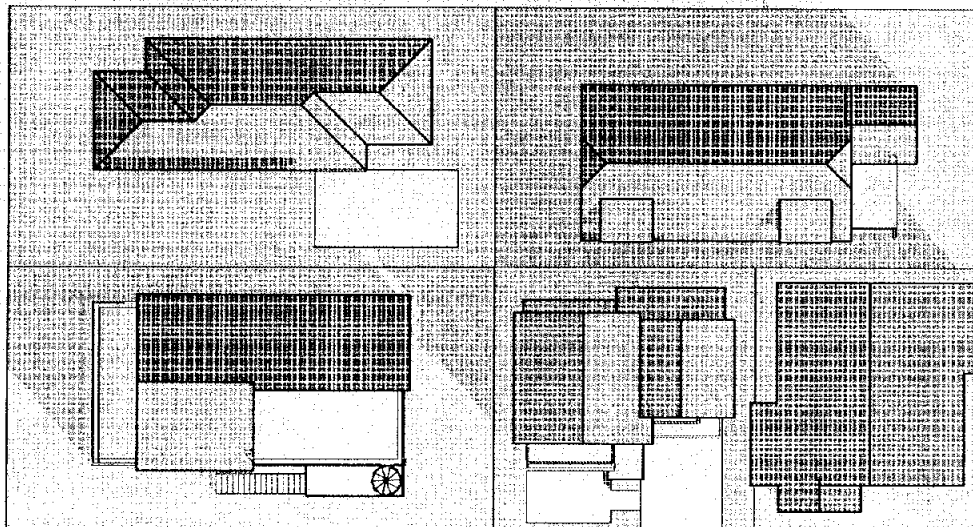


June 21, 10 am

Groat Summer Shadow Study
 Sun study: ArchiGraphics
 July 30, 2009



Dec. 21, 2 pm



Dec 21, 10 am

Groat Winter Shadow Study
 Sun study: ArchiGraphics
 July 30, 2009

Statement of Opposition to Variances on Project 09-0124
Douglas Bergengren, 300 8th Ave (Western Neighbor)
Version 2, August 21, 2009

I ask that the zoning rules be enforced without granting the variances.

I am living here rather than in a town like Milpitas in part because of zoning rules in Santa Cruz to control growth. When I bought my house, I studied it and the surrounding properties carefully, and considered what kinds of surrounding development was permitted and how that might affect my property. I assumed that the kind of new development that is proposed next door would not be permitted because of the setback requirements.

If this variance is granted, it will create a precedent that will encourage denser development. Contrary to the Master Plan, there will be an incentive to split a parcel into two, pack in 2-story houses with 5 foot setbacks on 3 sides, and sell each of the new parcels for more than half of what the original parcel was worth.

I'm unhappy with the process after the hearing was postponed on July 17. At that time, in an effort to be fair and maintain communication, we gave courtesy copies of our statements to the applicant, even though they were presumably publicly available at the Planning Board. In contrast, when we went to the office to get the updated plans and staff report, we were told the plans were copyrighted, so we were not permitted to copy them, even though they should be part of the public record. Also we could not view the revised staff report until the meeting. Both situations are unacceptable, and they deny us due process.

Furthermore, the objections we raised with our submissions in July have been totally ignored. In the revised plans, the rear setback of second story is even less than it was originally, which is moving in the wrong direction.

The current plan is unbalanced. The biggest variances are in the rear setbacks, even though they have a large impact on the neighbors, but there is no encroachment on the county property for parking, even though it is very common in the neighborhood and has a minimal impact on the neighbors.

The staff report justifies the variances in part because the new development creates two off-street parking spaces. It overlooks the fact that one on-street public parking space would be destroyed, so only one net parking space would be created. The same effect could be obtained by granting a variance to simply put two off-street parking spaces in front of the existing house, which would be OK with me, even though many of the displaced cars would probably park next to my house.

I also think variances should be granted to maintain and renovate the existing structure within its current envelope.

By the way, it's undesirable to pave the street parking area, as the staff report requests. There's already enough pavement in town. Let's use gravel or some other permeable surface.

I'm concerned that the height has been reduced of part of the fence between our properties. This is in our back fence and their side fence. Any new fence should be at least as high and at least as long as it is currently.

The plans include a first floor fireplace vent that is only about 3 feet from the fence. This is a fire hazard. Over time, the vines on our side have accumulated a mat that is about that deep. Presumably they will be trimmed on the applicant's side, but some vines can grow over two feet in one season.

The second story decks should be eliminated. The westerly deck intrudes into the foliage of the plum tree, and will require it to be trimmed back too much. The easterly deck invades the privacy of the neighbor to the south.

The foliage of the tree in the northwest corner of the lot should not be reduced from its current size. It provides good screening between my lot and my northeast neighbor.

Thank You,


Douglas Bergengren

We ask the Zoning Commissioner to deny the proposed variances and the development permit for project 09-0124 at 821 Carmel St., because they conflict with County Code s.13.10.230(c) and s.18.10.230^[1], and because^[2] practical, less-invasive alternatives exist.

1. The proposed variances conflict with s.13.10.230(c) and s.18.10.230 because they would be injurious to property or improvements in the vicinity.

While the proposed house would have less *ground-level* setback nonconformity than the existing house, it^[3] would extend the nonconformity to a second story^[4], thus greatly increasing its impact. The existing house's setback nonconformity barely impacts neighbors because the house is one story. Thus, most of its nonconformity is either hidden (by the existing trees, vines, or fences) or is inconsequential because it is close to the ground.

The project's extended nonconformity would greatly reduce the light and visual fabric^[5] provided by both of our eastern windows, by blocking most of the sky now visible there, and by greatly shrinking the existing plum tree's foliage^[6]. The reduction in foliage would also reduce our privacy, especially on our first floor. Finally, the nonconformant second story would greatly increase the project's impact on its northern and eastern neighbors.

We expect that these impacts will reduce the values of our property and of all others nearby.

2. The proposed variances conflict with s.13.10.230(c) because they would grant a special privilege inconsistent with the limitations on other properties in the vicinity.

The proposed variances would grant the special privilege of a highly-nonconformant second story. All new two-story houses built nearby in the past few decades appear to be either conformant or very nearly so. None appear to intrude anywhere near 6 feet into any setback.

The proposed variances would also grant the special privilege of building a new highly-nonconformant house. These variances are not, as the staff report contends, similar to variances that might be needed to maintain

^[7] some nearby houses. First, preventing an owner from maintaining an existing house is probably an uncompensated taking of property, particularly if she has owned it for a long time, or if she owned it before the restriction was enacted. Here, in contrast, the applicant recently bought the property, at a very low price, while^[8] knowing the applicable restrictions. Second, maintaining an existing house continues, but does not extend, existing nonconformities. Here, in contrast, the proposed variances would extend the nonconformity to a second story.

Finally, granting the variances would encourage others to seek similar special privileges, which would^[9] increase density (and attendant crowding and noise) beyond the level allowed by the General Plan.

3. The proposed variances conflict with s.13.10.230(c) because enforcement of the zoning ordinance does not create a hardship for the property's owners.

The owners bought the property less than a year ago, knowing its size and the applicable development^[10] restrictions. They paid about half the price of many neighboring properties^[11]. The existing house was^[12] almost-completely renovated in the last two years, and reportedly has 3 bedrooms. To date, the owners have used it infrequently (usually on alternate weekends or less often), not as a primary residence. Finally, the owners' newest plan would add ~400 square feet of basement space, bringing the house's gross area (excluding garage) to about 1,200 square feet. This is nearly as much area as that of many neighboring houses that occupy much larger lots. Thus, requiring their 2nd story (if any) to be conformant would not inflict a hardship.

EXHIBIT 1E

[13]

Any hardship is of the owners' creation, which does not justify a variance. As the 2nd District Court of Appeal said in City of San Marino v. Roman Catholic Archbishop, 180 C.A.2nd 657, 673 (1960), "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."

4. The proposed variances conflict with s.13.10.230(c) and s.18.10.230 because they are inconsistent with the county's General Plan.

a. General Plan Policy 8.4.2 requires the county to "encourage the maintenance and repair of existing non-conforming...residential structures...." The proposed variances encourage the demolition of an existing nonconforming house. [14]

b. General Plan Policy 8.1.3 requires the zoning ordinance to "protect light...air and open space for public and private properties". The proposed variances would significantly reduce neighboring properties' access to these resources.

c. General Plan Objective 8.1 promotes design that "...preserves and enhances the visual fabric of the community". The proposed project would diminish the local visual fabric for those who spend the most time near it: the neighbors.

5. The proposed variances conflict with s.13.10.230(c) and s.18.10.230 because of errors in the staff report.

In addition to the errors described in notes 3 (incorrect assertion that variance will not increase nonconformity), 4 (incorrect assessment of variance's impact), 6 (incorrect plum tree foliage diagram), and 13 (incorrect hardship analysis), the staff report:

a. Considers only impacts on the project's northern neighbor, not on us, the eastern neighbor, or the southern neighbor across Carmel St.;

b. Contains errors in the shadow studies. For example, the study for "June 21, 10am" (p.15) is quite similar to the one for "Dec. 21, 10am" (p.16). This isn't possible. On June 21 at 10am the sun is located ~95

[15]

degrees clockwise from north, so the shadows should be pointing almost due west, not north-northwest. Also, the studies cherry-pick the times; a 3pm or 4pm study would show much more shadowing, particularly of the small house east of the project.

c. Fails to show that the existing plum tree is multi-trunked.

For these reasons, we ask the Zoning Commissioner to deny the variances and the development permit.

Ronald Crane and Douglas Bergengren, 300 8th Ave.
(owners-occupiers of property immediately west of project property)

[1]

Page numbers are from the web version of the staff report at <http://sccounty01.co.santa-cruz.ca.us/planning/plnmeetings/PLNSupMaterial/Zoning/agendas/2009/20090717/002.pdf>. The version provided directly by the planner lacks consistent page numbering.

[2]

See note 13, paragraph 3.

[3] The staff report incorrectly states that "[t]he variance will not allow any construction that would increase the degree of nonconformity". (p.4).

[4] The staff report ignores this factor, implying that the extent of ground-level setback nonconformity totally captures a nonconformant structure's impact. (p.4; p.21; p.41). In fact, a structure's height contributes much more to its impact than does its extent of ground-level nonconformity.

[5] General Plan Objective 8.1 promotes design that "...preserves and enhances the visual fabric of the community".

[6] The staff report's diagram of the plum tree's existing foliage (p.6) is incorrect. The foliage extends ~8 feet farther north than shown, and ~3 feet less far towards the south. Also, the staff report's "dripline fence" erosion-control requirement (p.23, 43) would encourage drastically trimming the tree to reduce the fence's size.

[7] See p.21 and p.41, item 3: "[M]any [nearby] structures...do not conform.... Any repairs or replacement of exterior elements of many of these structures will require a variance.... Therefore, granting of this variance will not constitute a grant of special privileges...."

[8] See argument 3, immediately below.

[9] See, e.g., General Plan Policy 8.6.1, "...require residential structures to have a direct relationship to the parcel size...."; Policy 8.4.1, "Project density...shall be compatible with existing neighborhood density...but not to exceed densities designated in the General Plan...."

[10] The county's Code Enforcement Investigation Comments for the property, dated 8/28/2008, all but say that county representative "LJ" told Mr. Groat that his project would require variances. It says, e.g., "He intends to demolish the current redtagged structure and to build a replacement dwelling. I went over site standards and Variance proceedings."

[11] According to the county's Code Compliance Parcel Research Report for the property, they paid \$355,000 at a foreclosure sale. Our property's 2008-09 assessed value was \$711,257.

[12] In contrast, the proposed house would have only 1 bedroom, thus reducing available housing stock.

[13] The staff report says that denying the variances would "extinguish[] the ability to replace the existing substandard house" (p.21, 41) and that "the variances are necessary to provide economic use of the legal parcel" (p.19, 39). This is incorrect.

First, 58% of nearby houses – including some new or newly-renovated ones – are of single-story construction, so that is obviously an "economic" use of a parcel. (An informal tally of the area enclosed by, and including both sides of, the 7th Ave./Eaton/10th Ave./East Cliff rectangle, shows 119 one-story houses and 86 two-story houses).

Second, the 2nd-story variance is not necessary; there are several practical alternatives to the proposed project. The owners could (1) renovate the existing house, probably with some 1st-story variances and a parking-related encroachment permit; (2) replace the house with one that has the same footprint and height, probably with some 1st-story variances and a parking-related encroachment permit; (3) replace the house with one requiring less-invasive variances; (4) replace the house with a conformant one; or (5) sell the property. We are willing to discuss these possibilities with the owners. Also, the existing house was recently renovated, and is not "substandard".

[14]

While the existing house is, in part, significantly nonconforming (which raises s.8.4.2's admonition to "limit... structural alteration, or reconstruction of existing significantly non-conforming residential structures"), the house's significant nonconformity could be remedied by removing a rectangle approximately 6 feet by 3 feet from its eastern side.

[15]

Figures from <http://www.srrb.noaa.gov/highlights/sunrise/azel.html> using latitude 36:59:00 and longitude 121:59:00, with daylight-savings time selected for 6/21 but not for 12/21.

EXHIBIT JE

TO: Mr. Don Bussey, Zoning Administrator

August 20, 2009

SUBJECT: Proposed Variance for 821 Carmel, Santa Cruz, CA 95062

We oppose granting a variance for this property for all of the following reasons.

1. All neighbors support retaining the present structure as is and oppose granting the major variances that would enable new 2-story construction. (Please see the separately submitted, 4-page Petition containing 45 signatures of most of the nearby neighbors, all of whom oppose granting the proposed variance.)

Enforcement of setback requirements ensure reasonable limits on density. The proposed rear setback variance grossly violates this principle. Spacing, privacy, air and light for nearest neighbors are permanently degraded if this variance request is approved. If the rear setback requirement is met, neighbors could accept a new 2-story house at 821 Carmel because there would be reasonable separation from the four nearest structures at the rear and sides. Granting such a major rear setback variance would establish a bad precedent, since there is at least one other split lot in the neighborhood. It would encourage splitting of other nearby lots as well.

Allowing the proposed major rear setback variance imposes a new 2-story, (still grossly non-conforming) structure on neighbors. It would be placed within about the same location, with nearly the same setback distances where there now is only a very low-impact, non-conforming 1-story structure. Because it would be 2 stories rather than one, the impacts of the proposed new non-conforming structure on nearest neighbors is much worse. The Staff Report claims, with no substantiation, that "the resulting dwelling represents an overall improvement and replaces the significantly non-conforming structure with a structure that presents far fewer impacts to surrounding properties". That is the writer's opinion alone, and is not shared by any of the nearby neighbors, since it ignores the obvious: a much greater impact on us from a 2-story structure.

There is no mention in the Staff Report of the possible alternative of allowing the present structure to be retained as-is by clearing the red tag by paying modest fees and obtaining an Encroachment Permit to provide required off-street parking. This probably is because Staff seems completely unaware that the existing structure that would be demolished and replaced is brand new from the ground up. There is no mention of this fact in the Staff Report, however entries in the Code Compliance Parcel Research Report (CCPRR) do acknowledge these facts.

2. As written, the Staff Report leaves the impression that the existing structure is just a very old, substandard cottage that is appropriate to be demolished to permit a new, much nicer structure. Staff Report states that "the existing single story dwelling that occupies the site was constructed in 1921", and that "In 2006 a code violation was issued on the property for unpermitted construction of a new roof and exterior siding." That is a very incomplete and misleading description of the present structure and ignores what had been done to completely rebuild it recently by one of the previous owners.

The entire present cottage is only a couple of years old and nicely redone. The interior is beautiful and all new and completely redone by a previous owner. That previous owner went

to great lengths to ensure that the existing cottage's exterior retained and improved on the design and character of that which it replaced. It fits in very nicely within the neighborhood without being imposing on anyone.

Since it's all new, very nicely done, and has much more living space with 3 bedrooms than the proposed replacement with only one bedroom, the present owners would not be denied quiet use and enjoyment of their property if it were retained as-is. It would not be a hardship for them if the property were unchanged. Neither front nor rear setbacks of the present cottage are much different than the proposed new 2-story structure would have, but the present structure has very little impact on the nearby neighbors.

3. The Staff Report states that "the original structure included a dwelling and attached garage", that in 2006 "code investigation discovered that the attached garage had been converted into living space", that "proposed demolition of the original house would address the outstanding code violation" and that "the new house will also replace the required parking spaces that were lost to the unpermitted garage conversion".

First, dimensions of a small 1921 garage will not accommodate a modern automobile. Second, the very large tree in front would have precluded use of the "garage" even if a garage were still there. Third, that space hasn't been used as a garage for at least the past 25 years; it's always been converted living space over this long time. All the long-time residents in the area can verify this. Fourth, there are a number of much newer nearby structures that do not have a garage. The 2-story, 2-unit apartment building diagonally across the street at the corner of Carmel & 8th is just one example among many others in the area. Further, when a previous owner completely rebuilt the structure several years ago without permits, he merely cohesively integrated the long-ago converted "garage" space into the reconfigured and reconstructed living space.

While an attached 1-car garage is not a County requirement with all approved new construction, it is a preference and an admirable policy in principle (we do understand the intent of it to reduce on-street and external parking). But as a practical matter, hardly anyone in the area that has one uses it to park their car in it. They all use it for storage space, so nearly everyone parks in the driveway or on-street anyway. Please come and drive through the neighborhood and see for yourself. So the County preference for an attached one car garage with any new construction may only modestly reduce driveway and on-street parking.

Therefore, the Staff Report which recommends approval of the proposed new 2-story structure partly on the basis that it would have a new garage to "replace" the one that was lost is fallacious and does not provide any justification for a completely new structure. In fact, the owners easily can obtain an Encroachment Permit for a small fee to provide the required off-street parking spaces, where one of them would replace the loss of the "garage" that was enclosed to increase living space with the recent remodel. There is no code violation mentioned in the Code Compliance File for enclosing the garage. According to the CCPRR, the red tag is for unpermitted new roof and new siding only.

4. Granting a major variance for a 2-story structure of only 5 feet rear setback, instead of the required 15 feet, will have a devastating impact on our property at 311 9th Avenue, since the rear of the proposed new 2-story house would be placed right up against our side fence at our

rear patio. We would lose all privacy and have very little separation from the proposed 2-story structure, which would look right down on our rear patio, kitchen and downstairs bedroom, and would look straight across into our master bedroom in the upstairs rear only a few feet away. One would feel as though they were in a deep hole when standing on our rear patio. Despite this huge impact to our property, the Staff Report shockingly claims that "the impact of the building height on the rear neighbor is expected to be minimal". Again, this is the writer's subjective opinion, and unfairly dismisses the huge impact that the new 2-story would have on the privacy and use of the rear half of our house. Neighbors all agree that this variance request unfairly impacts our property rights and use.

We are dependent on the fairness of the review process to recognize how deeply we are impacted by the proposed major rear setback variance, and we appeal directly to you, the Zoning Administrator, to equally protect and preserve our interests and rights while you also consider those of the applicant. We would be severely penalized to the benefit and preference of the applicant if the rear setback variance is approved.

5. We neighbors recognize that the present owner has wishes and desires for the use of his property, just as we do with ours. As a concession to present owner/applicant, rather than granting major variances for a new 2-story house which we oppose, we neighbors instead propose the following set of alternatives which we support:

(a) Grant a variance to permit the enclosed garage to be used as living space, since it already exists and is nicely integrated into the present reconstructed cottage.

(b) Grant variances as necessary for any other non-conformities of the present structure that might require them.

(c) Grandfather the existing new construction, which was done to standard building codes, but done without permits, to be accepted as-is and establish it in the county system as approved living space. Allow the red tag to be removed by having the owner pay the modest permit and advertising fees, and waive the proposed penalty because present owner is blameless for the unpermitted work and the prior notices ignored by previous owners.

(d) Grant an Encroachment Permit to owners for the required number of off-street parking spaces on the property (present owners are using it that way now).

6. **Rebuttal to "Findings"**: Most of the statements in the Staff Report that are intended to provide support for approval of "Findings" are flawed, subjective opinions of the writer only, are not factual and are not the position of the neighborhood. The "Finding" number and requirement statement or phrase in Exhibit B of the Staff Report is in bold type below, followed by the rebuttal to the argument(s) given in the Staff Report, Exhibit B.

Development Permit Findings:

1. **"That the proposed location of the project..... will not be materially injurious to properties or improvements in the vicinity."**

If the proposed rear setback variance were to be approved I would suffer a major financial loss in the value of my property, and nearest neighbors on all sides would likewise be

adversely affected. The proposed replacement would materially damage the market value, aesthetics, functional use and privacy of my property (311 9th Ave., directly behind it) because the adjacent proposed setback variance of the 2nd story would substantially violate the 15' minimum rear setback by placing the proposed 2nd story unreasonably close to the rear half of my property.

My property was designed with the major living space (patio, kitchen/living room, downstairs bedroom & upstairs rear master bedroom) at the rear, directly adjacent to the rear of the proposed, too-close, non-conforming 2-story. When my house was built 24 years ago these living areas were configured to face the sun & light direction towards the side where the proposed, non-conforming 2 story would be, since there was high confidence that a 2-story structure such as that now proposed was not viable because of established rear setback requirements. (By the way, my property meets all current setback requirements and height limit.) Presently, only the peak of the roof line of the adjacent one-story house that would be replaced is visible from my property but is barely noticeable over our common fence line.

Several local realtors confirm that such a grossly inadequate, non-conforming proposed rear setback would result in a substantial reduction in the value, marketability and appeal of my adjacent property because it permanently degrades the aesthetics, future use of solar, overall separation, privacy and functional use of my property that could not be corrected. They estimated that it would reduce the current value of my property by at least \$50,000, and probably more. Nearby neighbors are sympathetic and agree, because they all recognize what the Staff Report and approval support statements for Findings fail to acknowledge: that my property would be materially damaged by the proposed rear setback variance. The neighborhood is overwhelmingly opposed to granting this variance in recognition and defense of my potential financial loss and that of nearest neighbors. They also are concerned that something similar might happen to some of them if a terrible precedent were set by approving the proposed major rear setback variance.

2. "That the proposed location of the project.....will be consistent with all pertinent County ordinances....."

Both 1st and 2nd floors of the proposed replacement grossly violate County rear setback requirements and would set a dangerous precedent if approved. The 1st floor setback non-conformance of the proposed replacement is not significantly better in any meaningful way than the present structure, and adding a non-conforming 2nd floor that does not even come close to meeting rear setback requirements makes the overall impact of the rear setback non-conformances of the replacement 2-story much worse on nearest neighbors than the present 1-story structure. All nearest neighbors are barely impacted by the non-conforming setbacks of the present structure, and the entire neighborhood much prefers that it remain as-is with its existing non-conformities that have little or no impact on all nearest neighbors (see Petition containing 45 signatures of nearby neighbors who oppose the variance, including all nearest neighbors on all sides and nearly all of those within more than a half-block radius of it).

3. "That the proposed use is consistent with all elements of the County General Plan and with any specific plan which has been adopted for the area."

The proposed development does adversely impact light, air and open space of nearest properties because it's badly non-conforming rear setback placement of the 2nd story does not even come reasonably close to meeting the County's rear setback standard, which is intended

to protect these key attributes and ensure adequacy of them for all nearby properties. The shading analysis results shown in the Staff Report are clearly incorrect and need to be redone, because the 2 extreme summer and winter cases, which should show significant differences in shadowing, instead show very similar results. A correctly done shadow analysis might demonstrate some impact on solar opportunities to one or more of the nearest neighbors. We ask that the shadow analysis be redone to account for all very recent design changes (i.e., 2nd story 1' farther back to give only 9' setback now, and a basement that may add overall height to the proposed 2-story house).

Nearby neighbors do not agree with the subjective opinion of the Staff Report writer who claims that the proposed non-conforming house is an improvement over the present non-conforming structure (see arguments immediately above which rebut supporting arguments for Finding 2). Instead, the proposed replacement has much more impact on nearest properties and imposes a new structure with worse non-conformity because it extends it to 2 stories (and now, a basement in the non-conforming area also under living space as a new design change). It would replace a completely new, larger, very nice 1-story house with remodeled interior which now is very nice and is no longer substandard.

We disagree with the Staff Report writer statements that the proposed house is properly proportioned. Nearby neighbors greatly prefer the unimposing proportions, architecture and placement of the new 1-story structure presently on this very small parcel (see arguments immediately above which rebut supporting arguments for Finding 2). We do not feel that the proposed replacement provides added visual interest; that is the opinion of the Staff Report writer alone. Instead it is more imposing and less attractive than the present 1-story. The present, new 1-story is more visually appealing and the neighborhood much prefers it because it retains all the desirable, historical architectural elements that are more interesting, deserve to be preserved and provide variety in our neighborhood.

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, land use intensities, and dwelling unit densities of the neighborhood."

AND

6. "The proposed development project is consistent with the Design Standards and Guidelines....and any other applicable requirements...."

Nearby neighbors find the presently existing, all new, 1-story structure visually attractive, with fully restored and preserved, traditional architectural elements of historical accuracy and interest dating back to 1921. The proposed, more contemporary, 2-story replacement isn't remotely similar to anything else in the neighborhood. The poor proportions and badly non-conforming rear placement of the proposed structure are all inappropriate and incompatible with the neighborhood. Overall features of the proposed 2-story house are inconsistent with other neighborhood properties.

The present structure blends nicely with other nearby structures. However, the proposed replacement does not. Its smaller rear setback would create an undesirable increase in density by its small size on a tiny lot, and is made worse by projecting upward to 2 stories, unnecessarily impacting nearest neighbors. It just doesn't fit in with nearby structures. Many neighbors consider the proposed replacement to be ugly in comparison with the present unimposing 1-story structure.

Variance Findings:

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."

Any claim of denial of privileges or hardship on the applicants by disapproval of a variance for a replacement 2-story structure has no merit. The CCPRR has 2 entries showing that before escrow closed the present owner came in to County offices twice to be briefed by code compliance staff on red tag removal procedures and on all preexisting limitations and restrictions on use of this undersize parcel. Owners knew before purchasing the property that a replacement 2-story that they desire could not meet County rear setback ordinances.

Therefore, any hardship is of the owners' creation by their own preference for a 2-story among several other viable 1-story options, and does not justify a variance. As the 2nd District Court of Appeals said in City of San Marino v. Roman Catholic Archbishop, 180 C.A. 2nd 657, 673 (1960), "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."

There are other alternatives besides a new 2-story structure. Per the Code Compliance Parcel Research Report (CCPRR), the present 1-story structure is all newly remodeled, both inside and outside, and has much more living space than the proposed replacement. Per the CCPRR, the red tag for unpermitted new roof and siding can be cleared by paying the modest permit and publication notices fees and fine (if the fine were imposed and not waived, which is unlikely). The total would be about \$2,600 if it included fines which would be about half of this total. Per County code compliance staff, legal off-street parking can be provided by applying for an easily obtained Encroachment Permit for a small fee to add the required, permitted parking spaces that meet off-street parking requirements. Therefore, by retaining the present 1-story structure as-is, the owners would not be deprived of the same use of their property that all other neighbors now enjoy. Owners alternatively could build a new 1-story replacement, possibly including a basement and garage, in the same footprint and envelope as the present structure under special grandfathering circumstances. So there are other, viable options that do not deprive reasonable privileges of use to owners.

2. "That the granting of the variance will be in harmony with the general intent and purpose of zoning objectives and will not be materially detrimental.....or injurious to property or improvements in the vicinity."

As previously stated above in rebuttal to Staff Report arguments for approval of Development Permit Findings, Item 1, if the proposed rear setback variance were to be approved I would suffer a major financial loss. Professional Realtors estimate a reduction of more than \$50,000 in the value of my property, and nearest neighbors on all sides would likewise be adversely affected. The proposed replacement would materially damage the market value, aesthetics, functional use and privacy of my property (311 9th Ave., directly behind it) because the adjacent proposed 2nd story setback would substantially violate the 15' minimum rear setback at the rear half of my property, diminishing the utility and value of key, unchangeable design aspects of my property because of the unreasonably close proximity of the proposed 2-story structure which would not meet established County setback standards.

Staff Report and statements intended to support approval of Findings fail to acknowledge that my property would be materially damaged by the proposed rear setback variance, and so would that of nearest neighbors.

As previously stated above in rebuttals to Staff Report arguments intended to provide support for approval of Development Permit Findings Items 2, 3, 5 and 6, the proposed 2-story replacement would be materially detrimental to nearest neighboring structures and would not be in harmony with them or with the nearby neighborhood. Staff Report ignores that the proposed replacement would make the overall rear setback non-conformance much worse by increasing non-conformance to 2 stories and a basement. Also, with living space located upstairs in the proposed replacement, noise levels projected to nearby neighbors will be much worse than if the present 1-story remained as-is.

3. "That the granting of such variances 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."

Contrary to statements made in the Staff Report, the only other property in the nearby neighborhood with similar potential variance issues is the one-story next door to the east of the subject property. It also is a non-conforming 1-story structure on a lot that is 5' smaller. All other parcels in the neighborhood are of adequate size such that they would not require a rear setback variance to build a 2-story structure of reasonable size, so their use would not be constrained by the limitations inherent on these 2 adjacent parcels due to their very small size.

All properties in the area have restrictions on their use to balance between preferences for use and protection for all nearby neighbors. However, viable alternatives do exist for them, since they could be rebuilt and/or remodeled within the existing footprint and envelope under grandfathering provisions, and that essentially has already happened with the subject property. It presently is not a substandard structure. So, granting a variance for a new 2-story structure that does not meet minimum setback requirements **WOULD** constitute a special privilege not available to other properties in the area. It would materially damage the value and use of nearest properties, and would constitute preferential treatment to the Applicants.

Further, if a variance were granted to the subject property, it would be at the expense and detriment of nearest properties, thus constituting a special privilege that is inconsistent with those available to other nearby properties. All others would be hard-pressed to obtain any significant variance because of their larger size, except under grandfathering provisions within the same footprint and envelope, just as is the case for the subject property. Applicants knew of these preexisting restriction on use of the parcel before purchasing it, so they have no right to expect special consideration that would violate these restrictions meant to fairly balance allowed use among all nearest parcels.

Jerry and Nancy Thomas
311 9th Ave.
Santa Cruz, CA 95062

10 AM Thurs 8/20/09

To: Robin Bolster-Grant 454-5357

From: J. Thomas 650-823-4350 (cell ph)

Subject: Petition to deny variance for 821 Carmel

Robin,

Please deliver the following 4-pg Petition to Mr. Don Bussey, Zoning Administrator, as soon as possible before the hearing tomorrow, 8/21/09.

This Petition contains 45 signatures, and updates the previous one provided to you earlier. Please remove that old one from the file and replace it with this one.

Thank you.

Gerry Thomas

p.1 of 5 pgs. total

PETITION

We the undersigned are neighbors in the area immediately around the property at 821 Carmel St., Santa Cruz, CA 95062. We oppose granting the major variances requested by the owner/applicant.

The existing structure's setback non-conformities barely impact neighbors. Granting these variances would extend a non-conforming use to 2 stories which increases the impact on neighbors.

Setback requirements are intended to control and limit density so as to have minimal adverse impact on the neighborhood. The proposed new structure does neither, but is much more imposing on the surroundings. New structures generally should be conforming.

Present owners bought the property recently with full knowledge that any conforming 2-story structure would have to be modest. Due to this restriction they were able to purchase the property at a substantial discount from the price they would have paid for a property not subject to these restrictions.

The present structure recently was totally renovated, both inside and outside. It has a much larger living space than the proposed replacement, and has ample front yard space on the right hand side to park 2 large vehicles off street, which the owners do, and we have no issue with that. Because the present structure is new and much larger than the proposed replacement, there is no hardship created for the owners by keeping it as is. Present use has minimal impact to the neighborhood. Please don't make it much worse by allowing these major variances.

<u>SIGNATURE</u>	<u>PRINTED NAME</u>	<u>ADDRESS</u>
	NANCY DEAN D'ANGELO	321 9th Ave
	KAREN MAASCH	350 9th Ave Santa Cruz
	Duane Maasch	350 9th Ave
	D. Petty	340 9th Ave
	Leslie Petty	340 9th Ave
	Ronald Crane	300 8th Ave.
	Douglas Bergengren	300 8th Ave., Santa Cruz
	David Kern	310 8th ave, Santa Cruz
	Nancy M Thomas	311 9th Ave Santa Cruz
	Jerry J. Thomas	311 9th Ave, Santa Cruz
	Benjamin Sherf	330 9th Ave SC.
	Nancy Westreich	255 9th Ave Santa Cruz
	Chris Heeter	265 9th Ave SC, 95062
	Sean McBurney	368 9th Ave SC 95062
	Kathryn McBurney	368 9th Ave SC 95062

PETITION

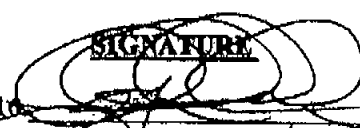



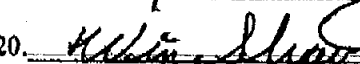






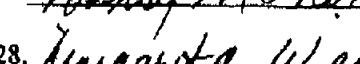
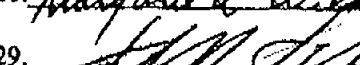
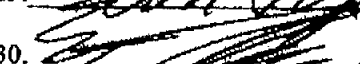
We the undersigned are neighbors in the area immediately around the property at 821 Carmel St., Santa Cruz, CA 95062. We oppose granting the major variances requested by the owner/applicant.

The existing structure's setback non-conformities barely impact neighbors. Granting these variances would extend a non-conforming use to 2 stories which increases the impact on neighbors.

Setback requirements are intended to control and limit density so as to have minimal adverse impact on the neighborhood. The proposed new structure does neither, but is much more imposing on the surroundings. New structures generally should be conforming.

Present owners bought the property recently with full knowledge that any conforming 2-story structure would have to be modest. Due to this restriction they were able to purchase the property at a substantial discount from the price they would have paid for a property not subject to these restrictions.

The present structure recently was totally renovated, both inside and outside. It has a much larger living space than the proposed replacement, and has ample front yard space on the right hand side to park 2 large vehicles off street, which the owners do, and we have no issue with that. Because the present structure is new and much larger than the proposed replacement, there is no hardship created for the owners by keeping it as is. Present use has minimal impact to the neighborhood. Please don't make it much worse by allowing these major variances.

	<u>SIGNATURE</u>	<u>PRINTED NAME</u>	<u>ADDRESS</u>
16.		JOHN L. KEWEENAW	278 9th
17.		JAMES C. KING	245 9th
18.		SANDRA R. KING	245 9th
19.		ANN BEVERLY	261 9th
20.		WILLIAM G. SHAW	240 9th
21.		VIRGINIA R. SHAW	240 9th Ave
22.			
23.		C.R. WILSON	225-9th AVE
24.		CAROLYN B. WILSON	225-9th Ave.
25.		JERRY J. THOMAS	331 9th Ave.
26.		CYNTHIA FERRIS	825 Carmel
27.		NANCY M. THOMAS	331 9th Ave.
28.		MARGARET A. WILKINSON	204 9th Ave. SC
29.		MIKE SAWYER	206 9th Ave SC 95062
30.		ERIC FARHAN	300 10th St 95062

PETITION

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The present structure recently was totally renovated, both inside and outside. It has a much larger living space than the proposed replacement, and has ample front yard space on the right hand side to park 2 large vehicles off street, which the owners do, and we have no issue with that. Because the present structure is new and much larger than the proposed replacement, there is no hardship created for the owners by keeping it as is. Present use has minimal impact to the neighborhood. Please don't make it much worse by allowing these major variances.

	<u>SIGNATURE</u>	<u>PRINTED NAME</u>	<u>ADDRESS</u>
31.		S.L. Fearo	320 9th Av.
32.		AURORA CONNOLLY	310-10th AVE
33.		Bruce A. Connolly	310-10th Ave.
34.		Linda Wilkerson	320 10th AVE. SC.
35.		Melissa Swann	305 8th Ave SC
36.		Karen L. Wither	321 8th Ave. SC. 95062
37.		STEVE McELROY	335 8th AVE SC 95062
38.		Sean Dandew	305 8th Ave SC 95062
39.		ROBERT ROSENGARD	336-8th AVE S.C.
40.		Pamela Rosengard	336-8th Ave SC 95062
41.		Tim Guxley	250 8th AVE SC 95062
42.		Charles J. Peoples	310 9th AVE SC 95062
43.		Todd L. Kent	339 9th Ave SC 95062
44.		Andrew Kater	310 8th Ave SC 95062

JUL-15-2009 11:03 AM J AND N THOMAS

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P.01

LETTER


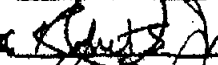
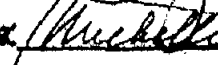
We the undersigned are neighbors in the area immediately around the property at 821 Carriel St., Santa Cruz, CA 95062. We oppose granting the major variances requested by the owner/applicant.

The existing structure's setback non-conformities greatly impact neighbors. Granting these variances would extend a non-conforming use to 2 stories which increases the impact on neighbors.

Setback requirements are intended to control and limit density so as to have minimal adverse impact on the neighborhood. The proposed new structure does neither, but is much more imposing on the surroundings. New structures generally should be conforming.

Present owners bought the property recently with full knowledge that any conforming 2-story structure would have to be modest. Due to this restriction they were able to purchase the property at a substantial discount from the price they would have paid for a property not subject to these restrictions.

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	<u>SIGNATURE</u>	<u>PRINTED NAME</u>	<u>ADDRESS</u>
31.		ROBERT S. JONES	310 9th Ave. (see prev. pg.)
45. X		ROBERT S. JONES	310 9th Ave.
46. X		Michelle Katchar	310 8th Ave.
47. X			
48. X			
49. X			
50. X			
51. X			
52. X			
53. X			
54. X			
55. X			
56. X			
57. X			

Robin Bolster

From: Andrew Katcher [rapresak@att.net]
Sent: Wednesday, August 19, 2009 11:28 AM
To: Robin Bolster
Cc: thomashse@sbcglobal.net
Subject: 821 Carmel St. Variance Hearing

Dear Ms. Bolster-Grant:

Attached please find a letter to Mr. Don Bussey, the Zoning Administrator for the above referenced hearing scheduled for this Friday, August 19. I would appreciate it if you could make certain that the letter is attached to the file and that Mr. Bussey sees it as soon as possible, so he can take it into account before the hearing.

I have both attached the file as a Word document and as a text version at the end of this email.

Thank you in advance for your prompt attention to this matter.

Sincerely,

Andrew Katcher
Owner, 310 8th Ave.
Santa Cruz, CA 95062
(408) 595-1308

Andrew & Michelle Katcher
310 8th Ave.
Santa Cruz, CA 95062

Mr. Don Bussey, Zoning Administrator

August 19, 2009

SUBJECT: Variance for 821 Carmel, Santa Cruz, CA 95062

Dear Mr. Bussey,

As owners of 310 8th Ave., we are writing to you to express our objection to the variance request for 821 Carmel St. in Santa Cruz, CA. The proposed variances will significantly impact our property by blocking the afternoon sun from our backyard. In addition, we do not support the variance for the following reasons:

1. Enforcement of setback requirements ensure reasonable limits on density. The proposed rear setback variance grossly violates this principle. Spacing, privacy, air and light for nearest neighbors are permanently degraded if this variance request is approved. If the rear setback requirement is met, neighbors could accept a new 2-story house at 821 Carmel because there would be reasonable separation from the four nearest structures at the rear and sides. Granting such a major rear setback variance would establish a bad precedent, since there are several other split lots in the neighborhood.

Allowing the proposed major rear setback variance imposes a new 2-story, (still grossly non-conforming) structure on neighbors. It would be placed within about the same location, with nearly the

same setback distances where there now is only a very low-impact, non-conforming 1-story structure. Because it would be 2 stories rather than one, the impacts of the proposed new non-conforming structure on nearest neighbors is much worse. The Staff Report claims, with no substantiation, that "the resulting dwelling represents an overall improvement and replaces the significantly non-conforming structure with a structure that presents far fewer impacts to surrounding properties". That is the writer's opinion alone, and is not shared by any of the nearby neighbors, since it ignores the obvious: a much greater impact on us from a 2-story structure.

There is no mention in the Staff Report of the possible alternative of allowing the present structure to be retained with appropriate variances for it, if necessary, to permit it to be accepted as is by the county system. This probably is because Staff seems completely unaware that the existing structure that would be demolished and replaced is totally brand new from the ground up. There is no mention of this fact in the Staff Report.

For these reasons and more, all neighbors support retaining the present structure as is and oppose granting the major variances that would enable new 2-story construction.

2. As written, the Staff Report leaves the impression that the existing structure is just a very old, substandard cottage that is appropriate to be demolished to permit a new, much nicer structure. Staff Report states that "the existing single story dwelling that occupies the site was constructed in 1921", and that "In 2006 a code violation was issued on the property for unpermitted construction of a new roof and exterior siding." That is a very inaccurate and misleading description of the present structure and ignores what had been done to completely rebuild it recently by the previous owner.

The entire present cottage (from the ground up, inside and out) is only a couple of years old and very nicely redone. The interior is beautiful and all new. (Please come and see for yourself, or send your building inspectors out to verify what at least the 4 nearest neighbors know with certainty, because we all saw it multiple times in various phases of new construction by the previous owner from start to finish). The previous owner went to great lengths to ensure that the existing cottage's exterior retained and improved on the design and character of that which it replaced. It fits in very nicely within the neighborhood without being imposing on anyone.

Since it's all new, very nicely done, and has much more living space with 3 bedrooms than the proposed replacement with only one bedroom, the present owners would not be denied quiet use and enjoyment of their property if it were retained as is. It would not be a hardship for them if the property were unchanged. Neither front nor rear setbacks of the present cottage are much different than the proposed new 2-story structure would have, but the present structure has very little impact on the nearby neighbors.

3. The Staff Report states that "the original structure included a dwelling and attached garage", that in 2006 "code investigation discovered that the attached garage had been converted into living space", that "proposed demolition of the original house would address the outstanding code violation" and that "the new house will also replace the required parking spaces that were lost to the unpermitted garage conversion".

First, dimensions of a small 1921 garage will not accommodate a modern automobile. Second, the very large tree in front would have precluded use of the "garage" even if one were still there. Third, that space hasn't been used as a garage for at least the past 25 years; it's always been converted living space over this long time. All the long-time residents in the area can verify this. Fourth, there are a number of much newer nearby structures that do not have a garage. The 2-story, 2-unit apartment building diagonally across the street at the corner of Carmel & 8th is just one example among many others in the

area. Further, when the previous owner completely rebuilt the structure several years ago without permits, he merely cohesively integrated the long-ago converted "garage" space into the reconfigured and reconstructed living space.

Requiring an attached 1-car garage with all approved new construction is an admirable policy in principle (we do understand the intent of it to reduce on-street and external parking). But as a practical matter, nobody in the area that has one uses it to park their car in it. They all use it for storage space, so everyone parks in the driveway or on-street anyway. Please come and drive through the neighborhood and see for yourself. So this rigid requirement for an attached one car garage with any new construction is totally ineffective at reducing driveway and on-street parking in the area.

Therefore, the Staff Report which recommends approval of the proposed new 2-story structure partly on the basis that it would have a new garage to "replace" the one that was lost is fallacious and does not provide any justification for a completely new structure.

As neighbors, we recognize that the present owner has wishes and desires for the use of his property, just as we do with ours. As a concession to the present owner/applicant, rather than granting major variances for a new 2-story house which we oppose, we instead propose the following set of alternatives:

- (a) Grant a variance to permit the enclosed garage to be used as living space, since it already exists and is nicely integrated into the present reconstructed cottage.
- (b) Grant variances as necessary for other non-conformities of the present structure.
- (c) Grandfather the existing new construction, which was done to standard building codes, but done without permits, to be accepted as is and establish it in the county system as approved living space.
- (d) Grant a variance for a double driveway on the front of the right hand side that can accommodate 2 cars parked off-street (present owners are using it that way now).

Andrew & Michelle Katcher
310 8th Ave.
Santa Cruz, CA 95062

August 19, 2009

TO: Don Bussey, Zoning Administrator
Robin Bolster-Grant, Project Planner

SUBJECT: Project 09-0124 - 821 Carmel Street, Santa Cruz, CA 95062
Opposition to Proposed Variance

I've lived on 9th Avenue for over 23 years and watched many changes to the neighborhood. Approximately nineteen (19) homes have either been demolished with new re-build or have upgraded modification.

Lots are small in the neighborhood. The proximity to each other impacts individual privacy and mostly noise issues. Over the years, the county has strengthened its noise ordinance because dwellings are so close to each other.

Reviewing lot sizes noted Location Map Exhibit E; all within the 7th-10th Bonnie to Dolores are approximately the same square foot size with the exception of two lots. The 821 Carmel and one of its adjacent neighbors are less than 50% the average size in the neighborhood. A second story will extend additional nonconformity and an impact on the adjacent properties. Due to the lot size, this plan is not visually compatible, in scale with, and integrated with the character of the surrounding neighborhood. Therefore, granting these variances to 821 Carmel would set a precedent that setback requirements are optional in future building within this already closely built neighborhood.

I ask that you address and clarify the following issues regarding this proposed project:

1. Variance Findings #3 Exhibit B states **"that the house is substandard. The report states that 2006 a code violation was issued for unpermitted construction of a new roof and exterior siding."** However, on October 26, 2006 Code Compliance Parcel Research Report states that in **"June a remodel took place without permit including a new foundation, electrical, new windows, the entire inside is stripped . . ."** I have been inside 821 Carmel and that stripped inside includes all new bamboo flooring, new bathroom and kitchen, which does not constitute a substandard house in my vocabulary.
2. Variance Findings #1 and 3 states that **"Due to the small size of the subject parcel, it is not possible to construct a reasonably sized house without encroaching into the rear setback. . . .denial of the proposed variance would result in a hardship for the property owner."** However, on August 5, 2008 and August 28, 2008 before purchasing 821 Carmel, applicant met with a representative from the county to discuss these very issues, knowing with full knowledge of the property's size and development restrictions prior to purchasing the property. The above dates are from Code Compliance Parcel Research Report.
3. Development Permit Findings #3 states **"that the development will not adversely impact the light, solar opportunities, air, and/or open space"**

available. . .will not adversely shade adjacent properties." I question the accuracy of Exhibit A and the Shadow Study of March 20, 2009 for the June 21 and December 21 10am study dates and request that a new analysis be prepared, especially now that the house will be only nine (9) feet from the adjacent north property rather than the ten (10) noted in the study.

4. **With the new addition of a basement of 7'5" under a concrete slab 1st floor to include an emergency escape window well, (a)** does that add any additional height or geometric change to the original plans, especially with an emergency escape window well, that needs to be addressed along with in my initial request for a new a Shadow Study noted in paragraph 3; **(b)** are all drainage, percolation and run-off issues addressed in these new plans for the adjacent properties; **(c)** do these plans comply with all Coastal Development and Commission regulations; **(d)** although it is stated that no trees will be removed, it is a fact that with excavation and the addition of a basement 7'5" and proximity to said trees, the existing water table will be disturbed and roots of the existing two old trees severally cut and/or damaged and in all probability the trees will be killed thus destroying a major sound screening for adjacent neighbors; and **(e)** are all seismic issues addressed due to the very close proximity of all adjacent properties.
5. What is the purpose of the addition of the basement; will it be used for storage; and will the garage be used for a vehicle? I asked this question due to the fact that this is proposed to be a two-story 800 square foot primary single-family dwelling with **only one bedroom**, although there is a second living room space on the second floor. I further question the justification for the second-story variance with this 400 square foot addition of usable space to the proposed house.

I oppose the proposed variance to 821 Carmel and request that the variance is denied.

However, I ask that the county grandfather all the existing new construction as approved living space at 821 Carmel and that there be encroachment permits approved for parking in front of the property. There are over fifteen (15) houses within 8th and 9th Avenues from Bonnie to Dolores that have either two paved driveways or the entire space in front of their homes paved to the street for tenant parking.

Nancy Dran D'Angelo
321 9th Avenue
Santa Cruz, CA 95062

August 10, 2009

To: Mr. Don Bussey, Zoning Administrator

RE: Application 09-0124
821 Carmel Street

We are the current home owners of 821 Carmel Street. The purpose of this letter is to address issues raised by the neighbors regarding construction of a new 2 story home on this site and to provide a reasonable recommendation to continue with proposed plans.

Our purchase of this property was made with the knowledge that the house had recently been superficially renovated however, was not structurally sound and did not comply with building codes. There is no foundation and the house remains on original posts set in 1921. The ground slopes down from the fence line to the house and rainwater collects underneath the structure. Ceiling heights are below habitable requirements averaging about 7 feet in height. Rotted wood and uncovered portions of the outer wall exist where new Tyvek and new siding were not yet put in place at the rear of the house. In addition, the existing structure does not conform to required setbacks, parking, etc. We discussed the issues regarding this property prior to purchase with Santa Cruz County. The construction performed by previous owners should have required coastal review and variance approval. Due to this rebuild we understood that the previously grandfathered acceptance to the serious non-conformities would be lost and that the equivalent of 6 variances would be needed for the current house.

We chose to purchase the property, tear down the existing structure and build a new home that meets the code and zoning requirements with two setback requests. Purchase was completed September 2, 2008. Discussions with the neighbor to the north at 311 9th Avenue led us to understand that he would block any new construction especially if it involved 2 stories since this would block his view from one window. While the neighbor at 311 9th Avenue did not have a view easement, we worked carefully with our architect to design the least impacting roof line possible. Current plans call for a peak that is approximately 5 feet lower than either of the 2 adjacent neighbors 2 story homes.

We spent several months working with the county and our architect to come up with a plan that would be the least impacting to the neighbors, require the least amount of variances and would not give us any privileges the neighbors do not already enjoy. The proposed structure is a modest 800 square foot home with minimal roof line. The design fits nicely with the homes of the neighborhood and will add considerable improvement as the existing structure is one of several poorly maintained in the neighborhood.

To help with the privacy issues neighbors have raised, we are willing to eliminate 2nd floor windows that face the rear and sides, however our preference is to maintain at least one window in each room upstairs for sufficient air flow. In addition, we are willing to use obscure glass on those windows to maintain the privacy of the neighbors if required. None of the neighbors' 2nd floor windows use obscure glass. We maintain that the windows and decks on the neighbors' houses to the rear and west are more invasive to us then ours will be to them. The neighbors' house to the east takes up most of the lot. There is no yard for us to look into from anywhere on a second floor. By the time we put a fence up between our lots we should not be able to see into any of her windows as they are so close to the lot line.

To mitigate the impact of shading neighboring structures we incorporated a design with a maximum height of 21 feet, 7 feet below maximum conforming height but extending a maximum of 6 feet (5 feet for a portion) beyond what would be considered conforming to a rear setback for this 2nd story. A 28 foot tall structure has greater shade impact to its surroundings than a structure that is 7 feet shorter and 5 to 6 feet longer. We incorporated this design so the neighbors' structures would be less impacted by shade and light. During all of winter and fall, a taller structure would cast more shade, as well as during the mornings and evenings during the summer.

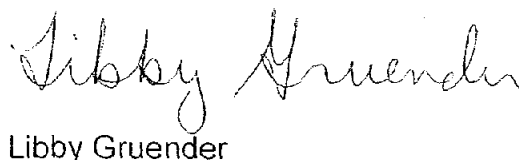
Neighbors to the west claim our new 2 story home will "alter the fabric of their light". Our proposed second story will be approximately 20 feet from the neighbors to the west and 18 feet from 2nd floor windows of our neighbor to the rear. Neighbors to the west want to grow bamboo and vines high along their back fence to maintain their privacy. For this reason they are interested in keeping the approximate 25 foot tall tree growing on the northwest corner of our property. It is in front of their only 2nd story window that faces our property. We believe the existing tree and planned bamboo will have more impact on their light than our proposed 2 story home. At their request, we are including this tree with a diameter of less than 6 inches on the plans we are re-submitting.

Additionally, we are adding with re-submittal of our plan, inclusion of a underground storage area to alleviate neighbors' concerns over using garage space for storage.

Enclosed we have submitted a petition of neighbors in favor of our proposed development.



John Groat



Libby Gruender

PETITION

We the undersigned are neighbors in the area around 821 Carmel Street, Santa Cruz. We approve the property improvements proposed to construct a 2-story family home that requires fewer variances than the existing structure and provides greater setback between neighboring homes as well as sufficient parking.

The proposed new structure will have only 2 variances; one to be within 5 feet of the rear fence which is identical to the distance between the shared fence and the rear neighbor's house. The second variance is to reduce the setback to the garage to 16.3 feet from the front of the property line however there is still sufficient space to include 2 required onsite parking spaces.

The existing home is extremely impacting to neighboring structures and requires the equivalent of 6 variances. The existing structure requires an equivalent variance for a **one inch** setback on the rear, **1 foot** setback on one side and a **3.5 foot** setback from the front of the house to the property line. There is no legal onsite parking so a variance to waive all onsite parking spaces would be required. Additionally, the existing house exceeds 40% maximum lot coverage. The current home has a 60% lot coverage footprint which requires a variance. The last variance required is to allow the existing home to exceed the maximum square footage by 10%.

The present home was superficially improved by a previous contractor without permits and was not built to code or inspected by the county. New siding and shingles were placed over rotting, termite infested beams and an extension in the kitchen area was built from an existing rotting shed which has not been improved. Additionally, several entries and ceiling areas are less than 6.5 feet.

SIGNATURE	PRINTED NAME	ADDRESS
1.	Albert Penilla	380 8th Ave, Santa Cruz CA 95062
2.	Anne Penilla	380 8th Ave, Santa Cruz CA 95062
3.	John Groat	821 Carmel St.
4.	Libby Gruender	821 Carmel St.
5.	Helen Cadwallader	330 10th Ave
6.	Richard D. Kulvin	901 Dolores St.
7.	Pauline Cummings	221 Erma St
8.	Melissa Schwartz	305 8th Ave
9.	William T. Guthery	465 9th Ave
10.	Anna Guthery	465 9th Ave.
11.	Mac Miller	355 9th Ave
12.	Curtis Miller	355 9th Ave
13.	Kathy Jones	470 9th Ave
14.	Cluor	901 Carmel Ave
15.	Alice Moore	321 10th Ave
16.	Susan Vignale	321 10th Ave

Robin Bolster-Grant

County Government Center

701 Ocean St

Santa Cruz, CA 95060

Re: 09-0124

821 Carmel St

Ms Bolster-Grant

We signed a petition for John Groat regarding the above mentioned property. After becoming more aware of the issues we wish to have our names taken off.

Thank You

The block contains two handwritten signatures in cursive. The first signature is 'Curtis Miller' and the second signature is 'Mae Miller'. Both are written in dark ink.

Curtis Miller

Mae Miller

Zoning Administrator, Planning Commission

July 22, 2009

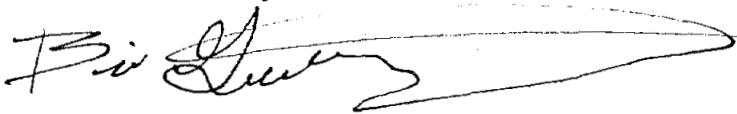
Re: Application 09-0124
821 Carmel Street

As a homeowner of 465 9th Street I support the property improvements, including the variances, proposed for 821 Carmel Street. I have reviewed the Zoning Administrator Staff Report, and the design fits nicely into the neighborhood. It will make the neighborhood look nicer, likely increasing property values for homeowners in the surrounding neighborhood.

As a neighbor to 821 Carmel I had the opportunity to see the quality of previous construction performed there a few years ago. Construction was only superficial to make the house look nicer. The old house was very old and falling apart, new construction consisted of slapping superficial materials over the old to make it look nice. I cannot imagine county codes were met during construction. It looked like the building would collapse given any moderate earthquake. The current building also appears to seriously violate several conformances with respect to setbacks and parking while the proposed design mitigates those problems.

For these reasons I approve of the proposed project on 821 Carmel Street.

William T. Guthery



Bill Guthery
65 9th Street
Santa Cruz CA 95062

SAN JOSE CA 951

27 JUL 2009 PM 2 T



Robin Bolster-Grant
Planning-68th department
701 Ocean Street 4th Floor

EXHIBIT 1E

TO: Mr. Don Bussey, Zoning Administrator

July 15, 2009

SUBJECT: Proposed Variance for 821 Carmel, Santa Cruz, CA 95062

1. Enforcement of setback requirements ensure reasonable limits on density. The proposed rear setback variance grossly violates this principle. Spacing, privacy, air and light for nearest neighbors are permanently degraded if this variance request is approved. If the rear setback requirement is met, neighbors could accept a new 2-story house at 821 Carmel because there would be reasonable separation from the four nearest structures at the rear and sides. Granting such a major rear setback variance would establish a bad precedent, since there are several other split lots in the neighborhood.

Allowing the proposed major rear setback variance imposes a new 2-story, (still grossly non-conforming) structure on neighbors. It would be placed within about the same location, with nearly the same setback distances where there now is only a very low-impact, non-conforming 1-story structure. Because it would be 2 stories rather than one, the impacts of the proposed new non-conforming structure on nearest neighbors is much worse. The Staff Report claims, with no substantiation, that "the resulting dwelling represents an overall improvement and replaces the significantly non-conforming structure with a structure that presents far fewer impacts to surrounding properties". That is the writer's opinion alone, and is not shared by any of the nearby neighbors, since it ignores the obvious: a much greater impact on us from a 2-story structure.

There is no mention in the Staff Report of the possible alternative of allowing the present structure to be retained with appropriate variances for it, if necessary, to permit it to be accepted as is by the county system. This probably is because Staff seems completely unaware that the existing structure that would be demolished and replaced is totally brand new from the ground up. There is no mention of this fact in the Staff Report.

For these reasons and more, all neighbors support retaining the present structure as is and oppose granting the major variances that would enable new 2-story construction. (Please see the separately submitted, 3-page Petition containing about 30 signatures of most of the nearby neighbors, all of whom oppose granting the proposed variances.)

2. As written, the Staff Report leaves the impression that the existing structure is just a very old, substandard cottage that is appropriate to be demolished to permit a new, much nicer structure. Staff Report states that "the existing single story dwelling that occupies the site was constructed in 1921", and that "In 2006 a code violation was issued on the property for unpermitted construction of a new roof and exterior siding." That is a very inaccurate and misleading description of the present structure and ignores what had been done to completely rebuild it recently by the previous owner.

The entire present cottage (from the ground up, inside and out) is only a couple of years old and very nicely redone. The interior is beautiful and all new. (Please come and see for yourself, or send your building inspectors out to verify what at least the 4 nearest neighbors know with certainty, because we all saw it multiple times in various phases of new construction by the previous owner from start to finish). The previous owner went to great lengths to ensure that the existing cottage's exterior retained and improved on the

design and character of that which it replaced. It fits in very nicely within the neighborhood without being imposing on anyone. (See the attached recent picture.)

Since it's all new, very nicely done, and has much more living space with 3 bedrooms than the proposed replacement with only one bedroom, the present owners would not be denied quiet use and enjoyment of their property if it were retained as is. It would not be a hardship for them if the property were unchanged. Neither front nor rear setbacks of the present cottage are much different than the proposed new 2-story structure would have, but the present structure has very little impact on the nearby neighbors.

3. The Staff Report states that "the original structure included a dwelling and attached garage"; that in 2006 "code investigation discovered that the attached garage had been converted into living space", that "proposed demolition of the original house would address the outstanding code violation" and that "the new house will also replace the required parking spaces that were lost to the unpermitted garage conversion".

First, dimensions of a small 1921 garage will not accommodate a modern automobile. Second, the very large tree in front would have precluded use of the "garage" even if one were still there. Third, that space hasn't been used as a garage for at least the past 25 years; it's always been converted living space over this long time. All the long-time residents in the area can verify this. Fourth, there are a number of much newer nearby structures that do not have a garage. The 2-story, 2-unit apartment building diagonally across the street at the corner of Carmel & 8th is just one example among many others in the area. Further, when the previous owner completely rebuilt the structure several years ago without permits, he merely cohesively integrated the long-ago converted "garage" space into the reconfigured and reconstructed living space.

Requiring an attached 1-car garage with all approved new construction is an admirable policy in principle (we do understand the intent of it to reduce on-street and external parking). But as a practical matter, nobody in the area that has one uses it to park their car in it. They all use it for storage space, so everyone parks in the driveway or on-street anyway. Please come and drive through the neighborhood and see for yourself. So this rigid requirement for an attached one car garage with any new construction is totally ineffective at reducing driveway and on-street parking in the area.

Therefore, the Staff Report which recommends approval of the proposed new 2-story structure partly on the basis that it would have a new garage to "replace" the one that was lost is fallacious and does not provide any justification for a completely new structure.

4. Granting a major variance for a 2-story structure of only 5 feet rear setback, instead of the required 15 feet, will have a devastating impact on our property at 311 9th Avenue, since the rear of the proposed new 2-story house would be placed right up against our side fence at our rear patio. We would lose all privacy and have very little separation from the 2-story structure, which would look right down on our rear patio, kitchen and downstairs bedroom, and would look straight across into our master bedroom in the upstairs rear only a few feet away. One would feel as though they were in a deep hole when standing on our rear patio. Despite this huge impact to our property, the Staff Report shockingly claims that "the impact of the building height on the rear neighbor is expected to be minimal".

Again, this is the writer's subjective opinion, and unfairly dismisses the huge impact that the new 2-story would have on the privacy and use of the rear half of our house. Neighbors all agree that this variance request unfairly impacts our property rights and use.

We are dependent on the fairness of the review process to recognize how deeply we are impacted by the proposed major rear setback variance, and we appeal directly to you, the Zoning Administrator, to equally protect and preserve our interests and rights while you also consider those of the applicant. We would be severely penalized to the benefit and preference of the applicant if the rear setback variance is approved.

Our neighbors directly behind us at 310 8th Ave., the Katchers, whose rear patio backs up to ours, are also badly impacted from the very close by, proposed new 2-story. However, they are out of the country on an extended vacation and are unable to be reached. They do not know about the proposed variance, and their realtor who manages their place is unable to reach them. In their absence, we are advocating for their interests as well by opposing the proposed variance in their behalf.

5. We neighbors recognize that the present owner has wishes and desires for the use of his property, just as we do with ours. As a concession to present owner/applicant, rather than granting major variances for a new 2-story house which we oppose, we neighbors instead propose the following set of alternatives which we support:

- (a) Grant a variance to permit the enclosed garage to be used as living space, since it already exists and is nicely integrated into the present reconstructed cottage.
- (b) Grant variances as necessary for other non-conformities of the present structure.
- (c) Grandfather the existing new construction, which was done to standard building codes, but done without permits, to be accepted as is and establish it in the county system as approved living space.
- (d) Grant a variance for a double driveway on the front of the right hand side that can accommodate 2 cars parked off-street (present owners are using it that way now).

Jerry and Nancy Thomas
311 9th Ave.
Santa Cruz, CA 95062

July 15, 2009

Zoning Administrator
Planning Commission
701 Ocean Street
Santa Cruz, CA 95060

**RE: Application 09-0124
821 Carmel Street
Santa Cruz, CA 95062
APN 027-111-33**

Dear Sir/Madam,

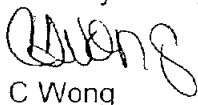
As the homeowner of 901 Carmel Street for 29 years, I have observed the many changes in my neighborhood. I received a card for this above-mentioned project Notice of Public hearing on Friday, July 17, 2009. The project proposes demolition of an existing one-story single-family dwelling and construction of a two-story 800 square foot single-family dwelling and attached garage. There is a variance to reduce the required setbacks in the rear from 15 feet to 5 feet, and garage from 20 feet to 16'3".

The first concern is that the neighborhood is already impacted with vehicles and parking issues. The area is popular due to the beach and yacht harbor. The neighborhood is a mix of fulltime residents, part-time homeowners, long-term renters, student renters and vacation renters. Often times the mix of neighbors has caused problems with noise, parties for those who are working residents versus those neighbors whose hours can vary day to day with their work situation. The property owner is not familiar with the daily impact full time residents deal with.

Second, parking is an issue. Most homes have 2-3 cars per household and this project will also overflow from the onsite parking to the street. The proposal mentions a garage but no driveway. I have not been able to look at the project building plans to confirm that there will be 2-car parking available. But as we all know, most garages are not used to park a vehicle; instead it become storage or converted into another bedroom.

Third, the setbacks should be considered for all parties who apply for them. I owned a property at 303 Assembly located on a small lot, just a block away. When I approached the Planning Department I was informed that I could not rebuild the structure, setback variances would not be permitted and if it burned down, I was out of luck to get a building permit. The Planning Departments information did not afford me any options and I sold the property. It appears Zoning rules are interpreted arbitrarily and inconsistently depending on the applicant and the Planning personnel. For this reason and the issues detailed above, the Department should deny the variances proposed in Application 09-0124.

Thank you for your time and consideration in this matter,


C Wong

cc: R. Manning, Atty at Law

Carol & Bob Heeter
14961 Jenners Dr.
Saratoga, CA 95070

SAN JOSE, CA 951

09 JUL 2009 PM 2 T



Planning Dept.
701 Ocean St.
4th Floor
Santa Cruz, Ca 95060

Attn: Robin Bolster-Grant

Dear Robin Bolster-Grant

This is regarding the request for variance for 821 Carmel St.

We, the neighbors do not want any new perspective in the neighborhood that do not meet all set back requirements - any new buildings and the property should be the the minimum of 15 feet from the rear fence and any new garage should be the minimum of 20 feet from the street. Nothing will be impossible on the street & the deck (upper) will look right down on us, making our privacy & hope you'll come look for yourself. We own 2659th Ave (corner corner & 9th) - we would be able to attend the 17th meeting. Sincerely,
Carol

July 9 09
14961 Jenners Dr.
Saratoga, Ca. 95070

Robin Bolster

From: Jerry Thomas [thomashse@sbcglobal.net]
Sent: Thursday, July 16, 2009 3:09 PM
To: Robin Bolster
Cc: Don Bussey
Subject: Proposed Variances for 821 Carmel, SC

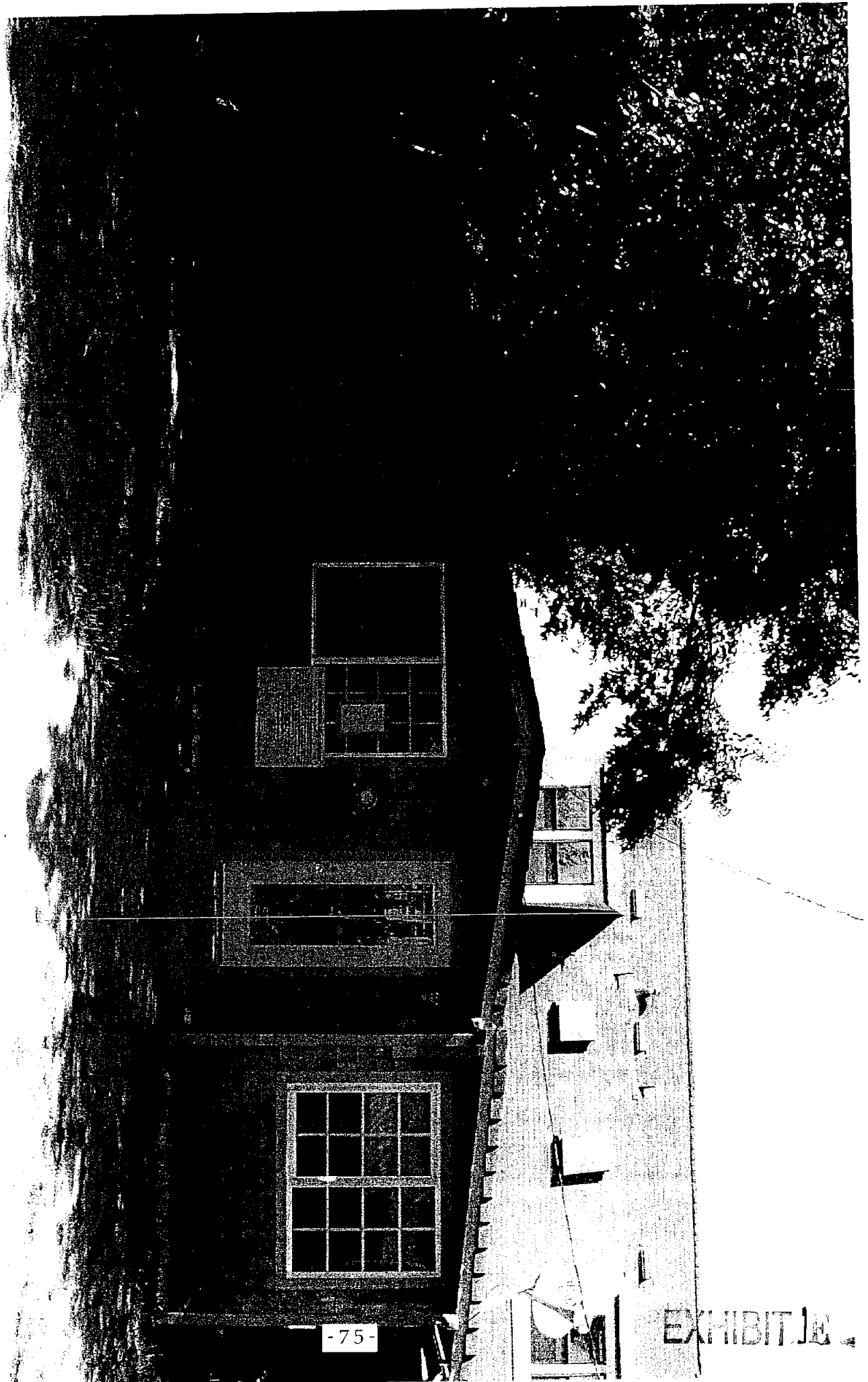
Robin,

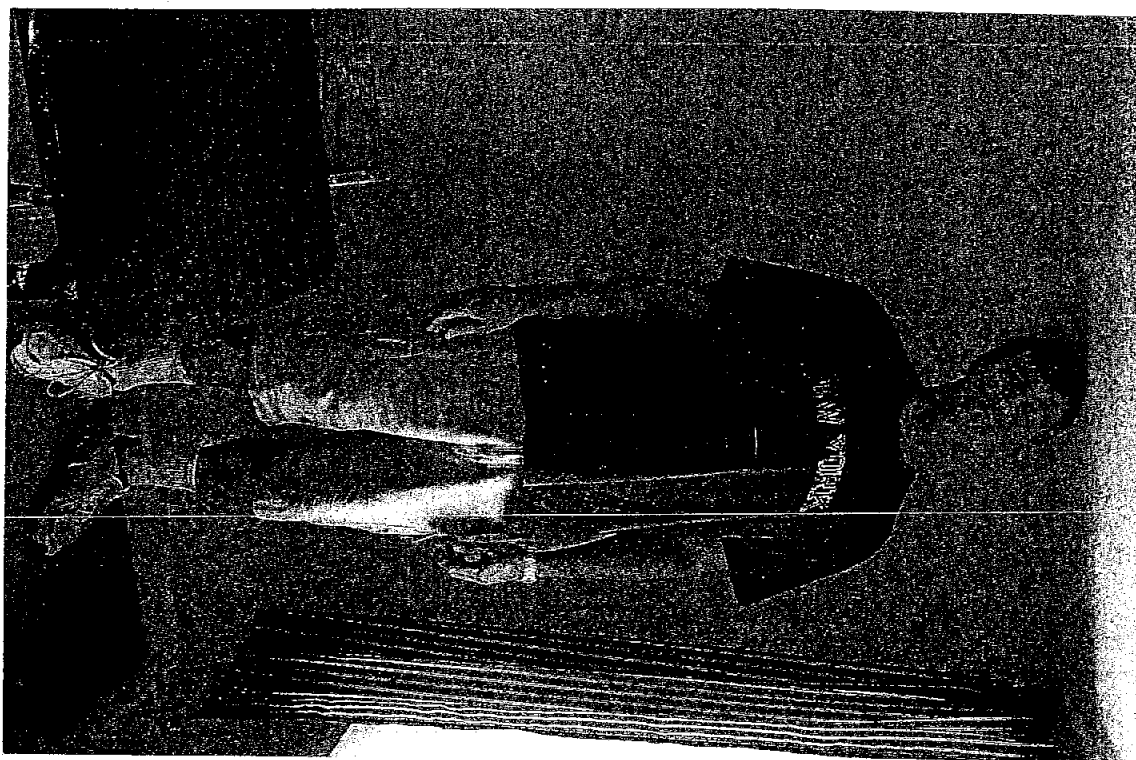
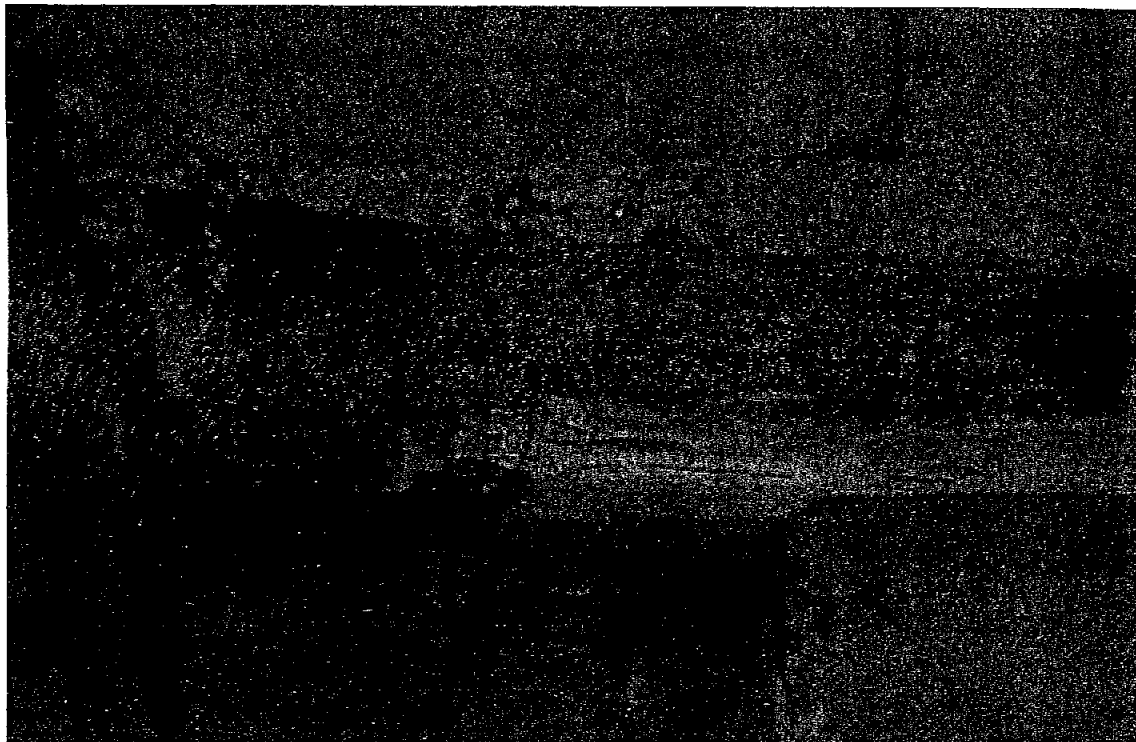
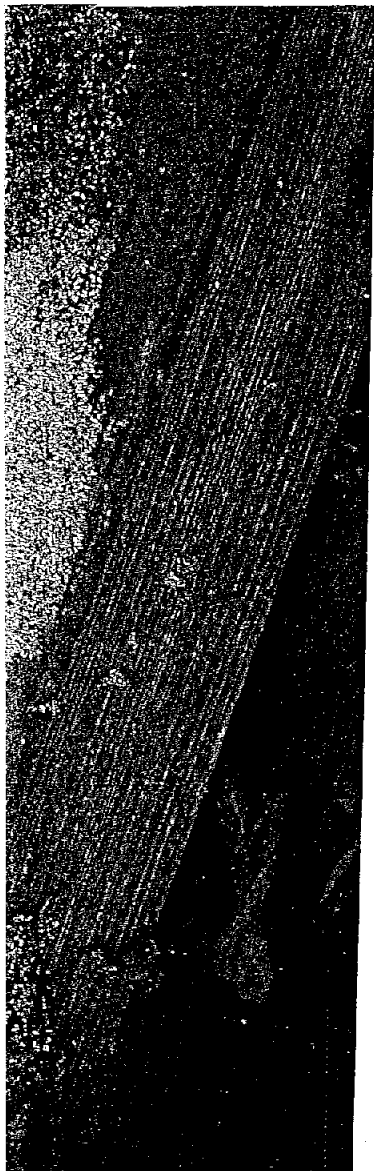
Please print the attached 3-pg letter and digital picture regarding the proposed variances to permit a new 2-story structure at 821 Carmel, Santa Cruz.

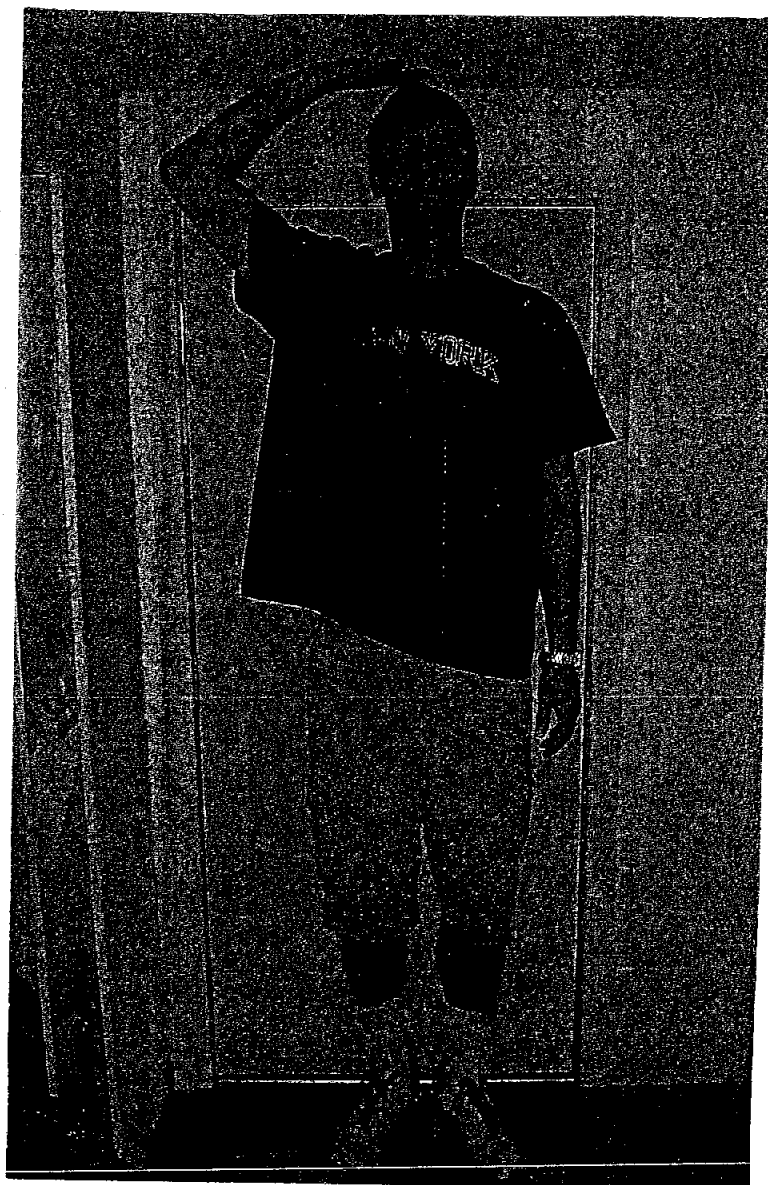
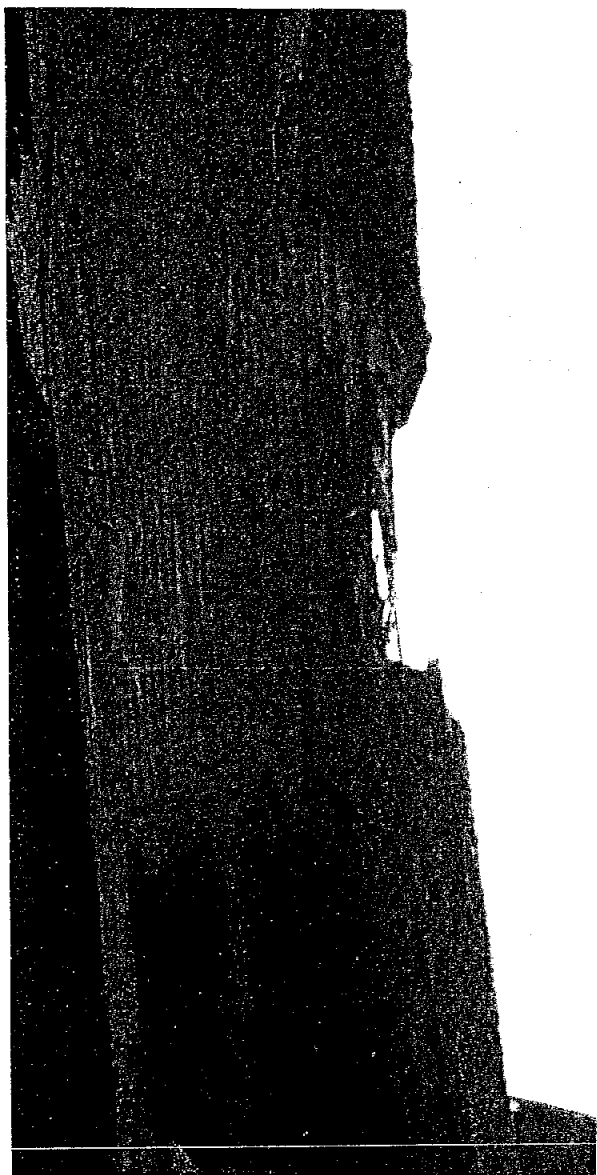
Would you then please give the printouts to Mr. Don Bussey, Zoning Administrator, so he has them well before the Hearing at 10 am tomorrow, 7/17/09, on this matter.

Thank You Very Much.

Jerry and Nancy Thomas 650-823-4350







conforming. Therefore the re-siding, re-roof interior remodel and foundation work can all be recognized by a Building Permit so long as no more than 50% of the exterior walls were structurally altered. Re-siding is not considered to be structural. The additions could not be approved without a Variance but it doesn't seem likely that this would be approved because the additions are so close to the property boundaries. Photos I saw of the shed at the back of the house show that it is perhaps 6 inches max. However, the shed looks very old so we would need assessor records to determine if it has pre-existing rights. If it does, then it may be possible to remodel this as a room addition since it would be less than a 50% change to all exterior walls. In addition to the conversion of the small shed to extend the kitchen, the house was extended to the West although it is unclear if this was along the entire western side of the house or only part of it. Again, assessors records are required to verify the original/recognized footprint. See notes above re Variance approval. However, if the addition were reduced in size it may be possible to approve a portion. A second story addition may also be possible, but max house size is 800 sqft. (FAR). A Coastal Permit would only be required if the addition were over 500 sq.ft. (which would also require a Variance).

08/11/08 The Status Code was Recorded Red Tag. Added by LJ

Per a neighbor the addition on the West of the property is actually a conversion of what appeared to be the original garage to habitable area. This would trigger today's parking standards and would be hard to get permitted because now there is no on-site parking. Also the remodel apparently included replacing all the original studs and work was done inside the old siding. Then the entire front wall was demolished and replaced all the siding was re-done and finally the entire structure was re-roofed. If this is true then the house was re-built and triggers Coastal Review, Variance approval etc.

08/28/08 BILL HOURS .5/LJ FOR Conference with Parties. Added by LJ

New owner who closes escrow tomorrow came in to discuss redevelopment of this lot. He intends to demolish the current redtagged structure and to build a replacement dwelling. I went over site standards and Variance proceedings. A Coastal Development Permit will be required to demolish the existing structure as well as for the new house and this can be processed with the Variance application. Since a Coastal Permit is required to demo I suggested that new owner (John Groat) contact CO Madrigal to discuss CC procedures to make sure that sufficient time was allowed for him to get permits to rectify the redtag. A Coastal Permit/Variance will require around 6 months to process before the Building Permit application can be submitted.

(Revised)Variance Findings

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.**

Due to the small size of the subject parcel, it is not possible to construct a reasonably sized house without encroaching into the rear setback and reducing the 20-foot setback to the garage. A variance is necessary to construct a replacement dwelling, as the required setbacks would leave a building envelope only 10 feet in depth. The strict application of the zoning ordinance with respect to setbacks would deprive the property owner of a reasonable amount of living space for their residence, a privilege enjoyed by other properties in the area (*Revised by Zoning Administrator on August 21, 2009*).

2. **That the granting of the 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.**

The granting of the 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 in that the existing structure ~~has not been detrimental to public health, safety or welfare and the replacement house is more conforming than the existing.~~ The existing dwelling has occupied the site over 85 years, extending to within inches of the rear property line and non-conforming with respect to lot coverage as well as front and rear yard setbacks. The existing structure is significantly nonconforming, in that it is located less than 5 feet from the adjacent dwelling to the east **and less than 5 feet from the northern and eastern property lines. The existing structure does not currently conform to California Building Code regulations pertaining to firewall construction and protected openings. Additionally the existing house does not conform to required lot coverage, floor area ratio or off-street parking requirements.** The replacement dwelling eliminates or improves all of the existing areas of non-conformance and results in a house that is more than 100 square feet smaller than the house that has historically occupied the site.

Although the replacement dwelling adds a second story where none previously existed, the second floor is setback an additional ~~five~~ **four** feet and allows the adjacent properties adequate access to light and air. **Shadow studies submitted for the project demonstrate that the impact of the proposed second story will be minimal with respect to interfering with access to sunlight.** The proposed home will be seven feet shorter than the zoning ordinance allows.

3. **That the granting of such variances 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.**

The majority of the dwellings on this block of Carmel Street were developed prior to the adoption of the zone district standards. Many of the older dwellings on the block have been constructed within the front yard setbacks and the adjacent house to the east exceeds the standards for lot coverage in addition to setback encroachments. Thus, many of the structures on this block of Carmel Street do not conform to this zone district site development standard. Any repairs or replacement of exterior elements of many of these structures will require a variance approval. Therefore, granting of this variance will not constitute a grant of special privileges inconsistent with the limitations upon the surrounding neighbors. The granting of the variance to reduce the rear yard and garage setbacks will provide a reasonable amount of living space for a residence. Denial of the proposed variance would result in a hardship for the property owner by extinguishing the ability to replace the existing substandard house *(Revised by Zoning Administrator on August 21, 2009).*

Additions to the Staff Report for the Planning Commission

Item 8: 09-0124

Late Correspondence

Appellants' Brief Opposing Application #09-0124
Santa Cruz County Planning Commission hearing 10/28/2009

2009 OCT 14 AM 9 05

Douglas M. Bergengren
Ronald E. Crane
Cynthia Ferris
Jerry Thomas
Nancy Thomas

Appellants

1. Executive Summary

We are appealing the Zoning Administrator's ("ZA's") approval of application #09-0124 on 8/21/2009, which granted five setback variances and a Development Permit for a proposed new house at 821 Carmel St. We ask the Commission to deny the variances and the Development Permit.

Last summer, the applicant made a bet. He bought his parcel for less than half of its 2006 price, knowing that the existing house was redtagged, and also knowing that he could build the house he wanted only if he got variances.¹ Today, he will ask you to grant an exception to the rules to make that bet pay off.

Under California law, that kind of exception – a variance – may be granted only when:

1. It is necessary to productively use the parcel; and
2. It does not contradict zoning's purposes; and
3. It does not grant a special privilege; and
4. It will not circumvent rules that the applicant knew about before he bought the parcel.

The applicant must show all four of these elements,² but he has not shown any of them. Instead, the law and evidence indicate that:

1. He has not shown that the variances are necessary to productively use his parcel. Indeed, he can't show this because the parcel is suitable for at least one productive, conforming use (see Appendix, p.12, and part 3.1.1);
2. The variances would undermine Zoning by extending a nonconforming use and by undermining our ability to rely on clear, well-enforced Zoning rules (see part 3.1.2);
3. The variances would grant special privileges because they are being used to "equalize" a small parcel with larger and more-expensive parcels, and because they use other parcels' existing, vested nonconformance to excuse new, purely discretionary nonconformance (see part 3.1.3); and
4. The variances would help the applicant circumvent rules that he knew about before he bought the parcel ("avoidable consequences element") (see part 3.1.4).

Because the applicant has not shown all four of the required elements, the Commission must deny both his variances and his Development Permit.

2. Prior Proceedings

The first ZA hearing was scheduled for 7/17/2009. All the appellants filed statements of opposition on or before that date, objecting most prominently to the second-story rear setback variances. Due to an error in the applicant's plans, the ZA continued the hearing to 8/21/2009. The error was that the western portion of the project's second story did not meet the required 15 foot front setback.

About four days before the 8/21/2009 hearing, we learned that the applicant would fix the error by moving the affected portion (approx. 60%) of the second story back an additional foot into the rear setback, reducing that setback to only 9 feet (from required 15 feet). The applicant also proposed adding a ~400 sq. ft. basement, expanding a deck by 1 foot³, and removing a window.

Before the 8/21/2009 hearing, we filed amended statements of opposition, which highlighted the additional impact caused by the proposed changes and included further reasons for denying the application. We also filed a petition opposing the project, containing 46 signatures of people owning or occupying nearby parcels.

At the 8/21/2009 hearing, the ZA approved the application with minor changes, such as limiting the basement's ceiling height.

We filed this appeal on 9/2/2009.

The applicant's 40 foot by 40 foot (~1600 sq. ft.) parcel currently contains a ~980 sq. ft. single-story house.⁴ A previous owner (not the applicant) performed substantial upgrades in 2006 and/or 2007, but was cited and fined for doing so without required permits.⁵

3. Detailed Argument

3.1. The Commission must deny the variances because the applicant has not satisfied the required legal elements.

A variance may be issued only if the applicant provides substantial evidence satisfying all applicable statutory elements.⁶ These elements, from Santa Cruz County Code ("SCCC") s.13.10.230(c)⁷, are:

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; and
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; and
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.

In addition, the courts also require:

4. That the variance will not circumvent restrictions that the applicant knew about before buying the parcel.

3.1.1. The applicant has not satisfied SCCC s.13.10.230(c)(1) because he has not shown that the variances are necessary to productively use his parcel.

Variance is intended as a "safety valve", largely to preserve Zoning against constitutional challenge.⁸ To confine it to this limited purpose, the California Supreme Court has held that provisions like SCCC s.13.10.230(c)(1) contain a "productive use" requirement. Under this requirement, an applicant can obtain a variance only if a peculiarity of her parcel deprives it of all productive conforming use.

Because the applicant has not satisfied this requirement, the Commission must deny his variances and his Development Permit.

► Understanding the law

The "productive use" requirement (but not the term itself) comes from *Broadway, Laguna, Vallejo Association v. Board of Permit Appeals of the City and County of San Francisco* (1967) 66 Cal.2d 767. In *Broadway*, the California Supreme Court interpreted a San Francisco code substantively similar to SCCC s.13.10.230(c), writing that:

We must be careful to distinguish, however, between those circumstances which prevent a builder from profitably developing a lot within the strictures of the planning code and those conditions which simply render a complying structure less profitable than anticipated.

Broadway, 66 Cal.2d at 775 (emphasis added). The Court reasoned that:

If conditions which merely reduce profit margin were deemed sufficiently 'exceptional' to warrant relief from the zoning laws, then all but the least imaginative developers could obtain a variety of variances, and the 'public interest in the enforcement of a comprehensive zoning plan' [cite] would inevitably yield to the private interest in the maximization of profits.

Id.

The *Broadway* Court then denied the builder's floor-area variance because she had not, among other things, shown that it was necessary to allow her to construct a "reasonably profitable" apartment building, *Broadway*, 66 Cal.2d at 780-81, despite the Zoning Board's unsupported assertion that she "cannot economically proceed with this attractive building" without it. *Id.* at 780.

In *Topanga Association for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506, the California Supreme Court interpreted Cal. Gov. Code s.65906⁹, writing that:

[T]he critical issue [is] whether a variance was necessary to bring the original party in interest into substantial parity with other parties holding property interests in the zone. (See *Hamilton v. Board of Supervisors*, *supra*, at p.66).

Topanga, 11 Cal.3d at 520-21 (emphasis added). *Hamilton*, in turn, holds that a variance under s.65906 is necessary to restore "substantial parity" only when, due to a peculiarity of the parcel, it

cannot be put to productive use if all the requirements for that zone are to be strictly applied.

(emphasis added). *Hamilton v. Board of Supervisors of Santa Barbara County* (1969) 269 Cal.App.2d 64, 66, rehearing denied 2/14/1969, cert. denied 3/19/1969.¹⁰

Hamilton's court reasoned that Variance exists to provide a remedy when Zoning treats a peculiar parcel so unfairly that it collides with constitutional limits. *Hamilton*, 269 Cal.App.2d at 65-66; see also *Topanga*, 11 Cal.3d at 511 n.4. But the court held that Zoning's restrictions reach those limits only when they prevent the parcel from being put to "productive use". *Id.* at 66, 67. The court then denied the applicant hotel's variance because it had shown, at best, that conforming development would cause "special deprivation" and "avoidable and unnecessary demolishing of valuable grounds and open spaces", but it had not shown that this prevented it from productively using its parcel. *Id.* at 69-70.

In *Craik v. County of Santa Cruz* (2000) 81 Cal.App.4th 880 a court of appeals upheld the applicant's variances for a residential parcel that was constrained by both Zoning and a FEMA wave-runup zone regulation. *Craik*, 81 Cal.App.4th at 886. Quoting the county's findings, the court focussed on whether Zoning and the FEMA regulation had deprived the parcel of particular attributes enjoyed by other parcels. 81 Cal.App.4th at 888-89. This approach is at least partially inconsistent with *Broadway's* "productive use" standard – which is controlling because it was established by the California Supreme Court. In the end, however, the *Craik* court implied that the variances were necessary because the parcel had little or no productive conforming use, holding:

The property in question is small and the backyard is unusable. Hence the need for a forward-set building site and decks. The proposed structure cannot be occupied in the first 23 vertical feet. Hence the need for four additional feet and an extra story.

Craik, 81 Cal.App.4th at 892.¹¹

Finally, in *Stolman v. City of Los Angeles* (2003) 114 Cal.App.4th 916, a court of appeals denied the applicant gas station a variance that would have allowed it to add an auto-detailing service. Following *Broadway*, the court wrote:

The key question is whether the detailing operation enhances the continued viability of the gasoline station to the extent that Clark [its owner] would face dire financial hardship without the variance, or whether Clark merely wants the variance in order to increase his profits from the sale of gasoline.

Stolman, 114 Cal.App.4th at 926 (emphasis added). The court then held that the applicant had not shown that denial of the variance would deny his business productive use of the property. *Id.* at 927. The court rejected as "insufficient" an assertion that the applicant "spent money refurbishing the gasoline station" because it lacked "concrete details such as how much money Clark [the station's owner] spent on remodeling". *Id.* Similarly, the court rejected an argument that the property's owner (who was not the station's owner) could not recover her costs to install new tanks if the station closed, because there was no concrete evidence supporting it. *Id.* at 926-27.

Stolman, thus, holds that the applicant must produce substantial, concrete evidence showing that her variance is necessary to support productive use of her property,¹² and that mere assertions are insufficient.

To summarize, Variance cannot be issued if there exists any conforming project that would productively use the parcel.

► Applying the law

In this case, the applicant has not shown that his parcel has no productive conforming use. Instead, via the planner's Staff Report, he has merely asserted that that is so, saying:

1. "[T]he variances are necessary to provide economic use of the legal parcel"¹³;

2. "It is not feasible to construct a modestly-sized dwelling...given the 10-foot front and 15-foot rear yard required setbacks. Additionally, the garage setback is required to be a minimum of 20 feet."¹⁴;
3. "Given the required setbacks and the 40-foot lot depth, a dwelling would not be feasible on this property without variances...."¹⁵;
4. "Due to the small size of the subject parcel, it is not possible to construct a reasonably sized house without encroaching into the rear setback and reducing the 20-foot setback to the garage"¹⁶;
5. "A variance is necessary to construct a replacement dwelling, as the required setbacks would leave a building envelope only 10 feet in width. The strict application of the...setbacks would deprive the property owner of a reasonable amount of living space for their primary residence, a privilege enjoyed by other properties in the area"¹⁷;
6. "Denial of the proposed variance would result in a hardship for the property owner by extinguishing the ability to replace the existing substandard house"¹⁸; and
7. "[T]he proposed design and configuration is the most feasible and least impactful to the surrounding neighborhood."¹⁹ (emphasis added).

These assertions are almost entirely unsupported, and they (and the remainder of the Staff Report) contain no concrete economic data, not even the kind of data that the *Stolman* court held "insufficient" to support a variance. 114 Cal.App.4th 926, 927. Still less do these assertions show the "dire financial hardship" that the *Stolman* court implied is necessary to justify a variance, *Stolman*, 114 Cal.App.4th at 926, or the extensive deprivation that the *Craik* court found to justify a variance. 81 Cal.App.4th at 892.

Only assertions 5 and 6 contain any analysis. But both assertion 5's premise ("only 10 feet in width") and its conclusions are mistaken. Its premise is mistaken because a compliant house's first floor envelope could be up to 30 feet wide and, if it had no garage, it could be 15 feet deep.²⁰ And its conclusion is mistaken both because of the incorrect premise and because it incorrectly assumes that the proposed project is the parcel's only possible productive use. Assertion 6 also relies upon this assumption (as, indeed, do most of the other assertions).

Finally, assertion 7 undermines the applicant's "necessity" argument. As the courts repeatedly have held, Variance does not exist to help applicants develop the "most feasible" projects, nor to increase their parcels' value or profitability, see *Broadway*, 66 Cal.2d at 775-76, nor even to confer benefits on the community. *Id.* at 777-78. Variance exists only to help the applicant regain productive use of his parcel if Zoning, in concert with some peculiarity of the parcel, deprives it of that use.

Thus, a variance cannot be issued if there exists any conforming project that would use the parcel productively.²¹ The applicant must show that no such projects exist. That he has not done, and indeed he cannot do, because at least one such project does exist, as Appendix, p.12, shows.

Because the applicant has not satisfied the "productive use" requirement, he has not satisfied SCCC s.13.10.230(c)(1), and the Commission must deny his variances and his Development Permit.

3.1.2. The applicant has not satisfied SCCC s.13.10.230(c)(2) because he has not shown that the variances will be "in harmony with the general intent and purpose of zoning objectives."

Because Variance permits case-specific exceptions to Zoning, it must be carefully circumscribed so that it does not become a means for "legislative decree...[to] be invalidated by administrative fiat". See *Cow Hollow Improvement Club v. City and County of San Francisco* (1966) 245 Cal.App.2d 160, 179. This element helps limit Variance's scope so that it does not undermine Zoning's overall purposes, such as encouraging citizens' reliance on fair, stable rules and discouraging the extension of existing nonconformance.

Because the applicant has not shown this element, the Commission must deny his variances and his Development Permit.

► **Understanding the law**

Zoning's primary purpose is to improve our neighborhoods by, among other things, separating uses, limiting sizes, and establishing setbacks. Well-designed, stable, consistently-obeyed Zoning codes also permit owners and residents – and prospective owners and residents – to easily find the rules, and to rely upon the rules that they find.

To protect Zoning's purposes, courts have been very reluctant to allow owners to extend or enlarge existing nonconforming uses. As the California Supreme Court noted in *County of San Diego v. McClurken* (1951) 37 C.2d 683, 687:

Given the objective of zoning to eliminate nonconforming uses, courts throughout the country generally follow a strict policy against their extension or enlargement.

And, as a court of appeals said in *Dienelt v. County of Monterey* (1952) 113 Cal.App.2d 128, 131:

The ultimate purpose of zoning is to...reduce all nonconforming uses within the zone as speedily as is consistent with proper safeguards for the interests of those affected. Any change in the premises which tends to give permanency to, or expands the nonconforming use would not be consistent with this purpose.

For similar reasons, courts also have insisted that Variance be rare. As the California Supreme Court said in *Topanga*, 11 Cal.3d at 520:

[A]t best only a small fraction of any one zone can qualify for a variance.

And, as a court of appeals noted in *Cow Hollow Improvement Club v. City and County of San Francisco* (1966) 245 Cal.App.2d 160, the existence of nonconforming structures in the area

do[es] not provide a justification for undermining the legislative determination that further [current] development should be more strictly controlled. Were the Board empowered to rule otherwise, a tightening of zoning regulations by legislative decree could always be invalidated by administrative fiat.

Id. at 179²².

► **Applying the law**

The Commission should deny the proposed variances because they contradict Zoning's purposes. They would, for example, extend an existing nonconformity vertically to a second story, thus greatly magnifying its impact. While the Staff Report denies this, saying:

- "The replacement dwelling eliminates and/or improves all of the existing [house's] areas of non-conformance...."²³ and
- "The variance will not allow any construction that would increase the degree of nonconformity...."²⁴

both statements are incorrect. The second-story rear setback variances would permit the applicant to build a structure that would create a new nonconformity, extending variously 5 or 6 feet into the rear setback²⁵ and up to 21 feet vertically.²⁶ Since the structure would be new, this nonconformity would persist indefinitely. This contradicts both the courts' policy limiting existing nonconformities' expansion, and their policy limiting Variance's availability.²⁷

The proposed variances would also undermine the predictability that Zoning is meant to engender. For example, appellants Thomas built their house oriented towards the south, expecting Zoning's setback requirements to protect their investment by minimizing impacts from applicant's adjoining parcel. Appellants Bergengren and Crane bought their house relying upon these same requirements, and for similar reasons.

By making Zoning the rule, and Variance the infrequent exception, the legislature and our Board of Supervisors intended to create stable rules for property owners and occupants to rely upon. Granting the requested variances would destabilize this order. Instead of being able to rely upon clear, easily-located setback requirements (such as those in SCCC s.13.10.323), property owners and occupants would have also to locate, examine, and interpret the setback-related decisions of the Zoning Administrator, the Planning Commission, the Board of Supervisors acting on appeal, and the courts. And, since those decisions would be issued piecemeal, even that examination would yield only sketchy outlines of how those entities might handle a particular variance request. The resulting confusion would be unfair both to existing owner and occupants, and to prospective ones – a situation that Zoning was intended to prevent.

Because the applicant has not shown that his variances are "in harmony with the general intent and purpose of zoning objectives", he has not satisfied SCCC s.13.10.230(c)(2), and the Commission must deny his variances and his Development Permit.

3.1.3. The applicant has not satisfied SCCC s.13.10.230(c)(3) because he has not shown that the variances will not "constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and zone in which such is situated."

Variance is intended only to restore productive use to parcels otherwise denied that use by Zoning, not to enhance parcels that already can be used productively. See *Broadway*, 66 Cal.2d at 775-76. This element helps confine Variance to parcels for which it is truly necessary.

Because the applicant has not shown this element, the Commission must deny his variances and his Development Permit.

► **Understanding the law**

A variance confers a special privilege when the parcel can be used productively without it. In *Broadway*, the California Supreme Court held that a developer's floor-area variance was not necessary to productively use her parcel. 66 Cal.2d at 775-776. The Court summarized its conclusion by saying

The variance sought by the developer in this case would confer not parity but privilege.

Id. at 781.

(In this context, "parity" means the ability to productively use a parcel in conformity with Zoning).²⁸ Thus, a variance confers a special privilege when it is used to enhance a parcel that can already be used productively, see *Hamilton*, 269 Cal.App.2d at 66-67, or to increase its value or profitability, see *Broadway*, 66 Cal.2d at 775-76, or when it is used to "insure against financial disappointments". *Broadway*, 66 Cal.2d at 781.

These limits insure that Variance is not used to "equalize" parcels, so that every parcel can be developed substantially to the same extent, and with the same features, as, for example, larger and more expensive parcels²⁹. Variance is intended only to restore productive use of a parcel when Zoning, acting in concert with some peculiarity of the parcel, deprives it of such use.

Similarly, there is no legitimate comparison between granting a variance to allow an existing nonconforming house's owner to maintain it, and granting a variance to allow a person to build a new nonconforming house.

Most existing nonconforming houses were once conforming, at which point they acquired "a vested property right" in their continued existence, *Cow Hollow*, 245 Cal.App.2d at 181, which our constitutions limit Zoning's ability to infringe. See generally Lanza fame, California Land Use Practice (Cont.Ed.Bar) Nonconforming Uses s.8, p.350-59 (rev. 7/09). That is, even if Zoning dictates that a variance is required to maintain an existing nonconforming house, our constitutions may require that the variance be issued – at least until enough time has elapsed to allow reasonable amortization of the house's cost. See *Id.* at 355-57.

On the other hand, new construction starts with the assumption that all current Zoning rules apply. The owner begins with an empty parcel, so he has no vested interest in any existing nonconformance.

Permitting the applicant to leverage existing (quite-possibly vested) nonconformance as a reason to permit his purely-discretionary nonconformance would badly undermine Zoning. As the *Cow Hollow* court held

The fact that the nonconforming uses enjoy a more favorable ratio of area per dwelling unit does not compel the extension of such nonconforming use to other property owners

in the zone whose property is required to conform to the existing code. To allow this extension of nonconforming use by variance would do violence to the meaning and purport of the comprehensive zoning code and could result in a gradual whittling away of its objective by converting conforming uses into nonconforming uses.

245 Cal.App.2d at 181.³⁰

► **Applying the law**

In this case, the variances confer special privileges because the applicant has not shown that they are necessary to productively use his parcel, because they are being used to "equalize" the parcel with larger and more-expensive parcels in the vicinity, and because they leverage other parcels' existing nonconformance as an excuse for new nonconformance.

Part 3.1.1 above, describes the applicant's failure to show that the variances are necessary to productively use his parcel.

On "equalization", the proposed house has approximately 1425 gross sq. ft. (see note 27), including 1½ baths, a bedroom, a living room very similar to (and suitable for the same use as) the bedroom, a kitchen, a garage, a family room, two south-facing decks with French Doors, and a 400 sq. ft. basement.³¹ It is, thus, only somewhat smaller, and hardly less feature-rich, than a conforming house that could be built on a much larger and more-expensive parcel in the vicinity. While it seems likely to be a very pleasant house, it is not Variance's purpose to insure that. Since the applicant can build a productive conforming house – such as the one described in the Appendix, p.12 – Variance cannot legally be used to improve, enrich, enhance, or otherwise upgrade that house, nor even to mitigate the potential financial disappointment of its limitations. As the California Supreme Court said in *Broadway*:

[V]ariances were never meant to insure against financial disappointments.

66 Cal.2d at 781.

On the "nonconformance excuse", the Staff Report's Variance Findings for SCCC s.13.10.230(c)(3) (p.21) focus most of their efforts on this issue, saying

The majority of the dwellings on this block of Carmel Street were developed prior to the adoption of the zone district standards. Many of the older dwellings on the block have been constructed within the front yard setbacks and the adjacent house to the east exceeds the standards for lot coverage in addition to setback encroachments. Thus, many of the structures on this block of Carmel Street do not conform to this zone district site development standard. Any repairs or replacement of exterior elements of many of these structures will require a variance approval. Therefore, granting of this variance will not constitute a grant of special privileges inconsistent with the limitations upon the surrounding neighbors.

Staff Report at 21.

All of this is but to say, "Others have nonconforming parcels, so we should get variances to make our parcel nonconforming, too." Adopting such a policy would ensure that every parcel would be developed as intensively as the largest nonconforming parcel in the vicinity. This arms race would largely nullify setback, maximum-area, and other requirements, and thus would largely defeat Zoning's purposes.

Because the applicant has not shown that his variances do not "constitute a grant of special privileges", he has not satisfied SCCC s.13.10.230(c)(3), and the Commission must deny his variances and his Development Permit.

3.1.4. The applicant has not satisfied the "avoidable consequences element" because he is pleading for variances to help him circumvent restrictions that he knew about before he bought his parcel.

Variance is not intended to reward attempts to circumvent Zoning. An applicant cannot obtain a variance by buying a parcel that he knows to be restricted by Zoning, then arguing that he needs a variance because those same restrictions create a "hardship".

Because the applicant has not complied with this element, the Commission must deny his variances and his Development Permit.

► **Understanding the law**

A California court of appeals first adopted this "avoidable consequences" principle in *Minney v. City of Azusa* (1958) 164 Cal.App.2d 12, *appeal dismissed* 359 U.S. 436 (1959) in which it refused a variance to build a church in a residential area. The court distinguished between hardships that "inhere[] in the particular property" (which can be used to justify a variance, if all other requirements are satisfied) and hardships created by the applicant, which cannot be used to justify a variance. *Minney*, 164 Cal.App.2d at 31-32. Of the latter, *Minney* said:

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.

164 Cal.App.2d at 31-32. *Minney* was followed by *City of San Marino v. Roman Catholic Archbishop* (1960) 180 Cal.App.2d 657 *cert. denied* 364 U.S. 909 (1960), in which the court refused a variance for a church to continue to use a residentially-zoned parcel for a parking lot and a playground, holding that the church's hardship arose from how it chose to use its parcels. *San Marino*, 180 Cal.App.2d at 672-73, 664.

Finally, the California Supreme Court affirmed a similar principle in *Broadway*, holding that a developer could not justify a variance by citing the added burden of voluntarily adopting higher-than-required building standards. 66 Cal.2d at 778.

► **Applying the law**

In the applicant's case, he talked with appellant Jerry Thomas – and consulted a county planner – before buying the parcel in foreclosure for \$355,000, which was less than half its 2006 price³².

Around July 2008, appellant Jerry Thomas noticed the applicant inspecting the parcel, and asked him whether he was considering buying it. The applicant acknowledged that he was, and Mr. Thomas told him about the parcel's limited development potential, about the applicable setback requirements, and about the fact that they could be waived only with a variance.

This knowledge was supplemented and reinforced by the applicant's 8/28/2009 meeting with a county planner, whose notes say, in part³³:

New owner who closes escrow tomorrow came in to discuss redevelopment of this lot. He intends to demolish the current redtagged structure and to build a replacement dwelling. I went over site standards and Variance proceedings.... I suggested that new owner (John Groat) contact CO Madrigal....

Thus the applicant had not only legal notice of the Zoning code, but ample actual notice that the house he wished to build would require variances. He nonetheless bought the parcel, betting that he would get variances to sidestep a conforming house's limits. And now he asserts that that purchase is causing him "hardship"³⁴ and that "the variances are necessary to provide economic use of the legal parcel".³⁵

Because the applicant could have avoided this "hardship" – which involves only the obligation to comply with the Zoning code – he has not satisfied this element, and the Commission must deny his variances and his Development Permit.

3.2. The Commission must deny the Development Permit because the applicant has not shown that "the proposed location of the project and the conditions under which it will be operated or maintained will be consistent with all pertinent County ordinances...."

Because the applicant's project requires variances, and he has not satisfied the required variance elements, his project is inconsistent with the ordinance (SCCC s.13.10.323) from whose provisions he sought the variances. Therefore, the Commission must deny his Development Permit.

4. Conclusion

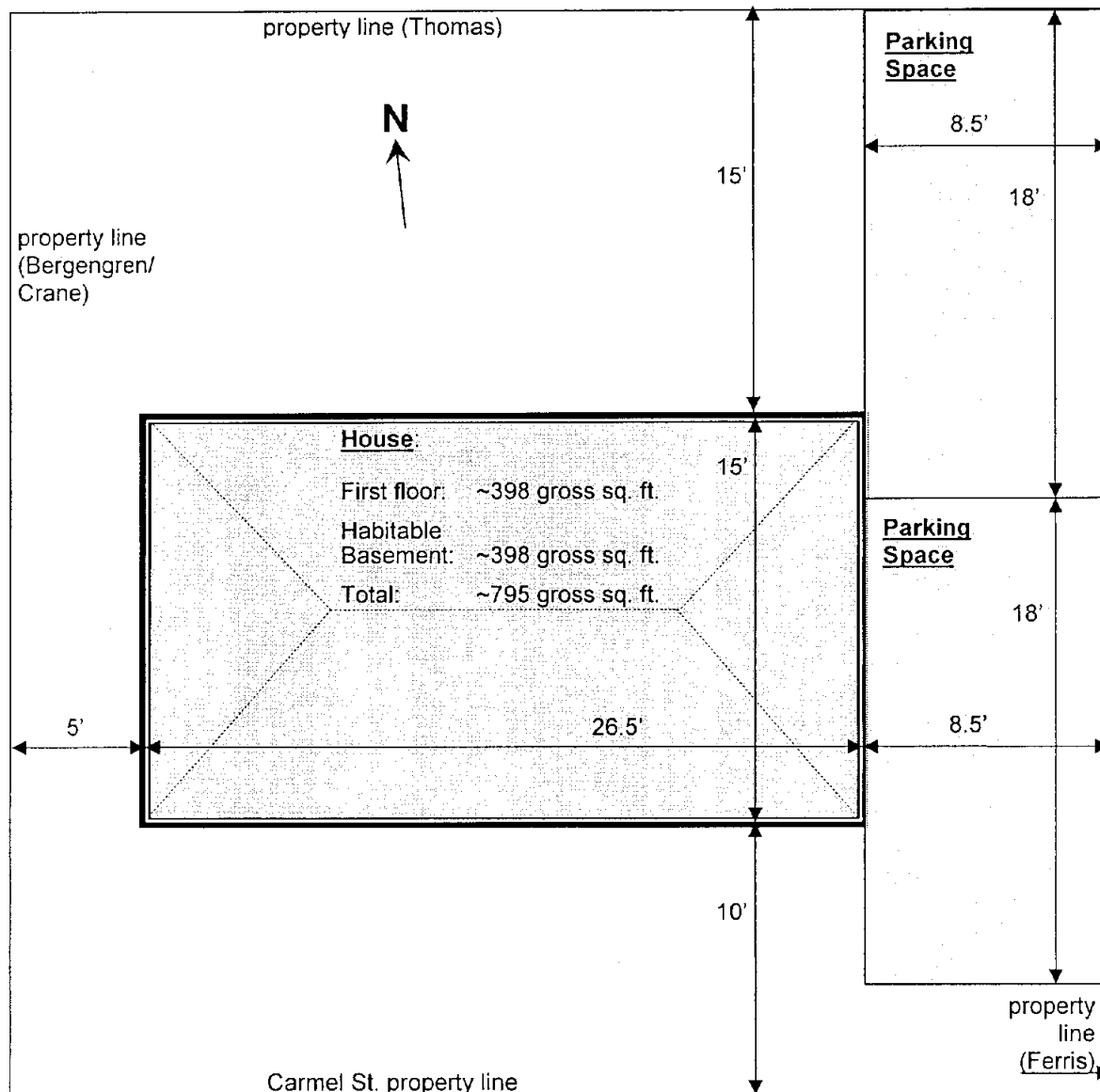
The applicant has not shown the four elements required for a variance. On the contrary:

1. He has not shown that the variances are necessary to productively use his parcel. Indeed, he can't show this because the parcel is suitable for at least one productive, conforming use (see Appendix, p.12, and part 3.1.1);
2. The variances would undermine Zoning by extending a nonconforming use and by undermining our ability to rely on clear, well-enforced Zoning rules (see part 3.1.2);
3. The variances would grant special privileges because they are being used to "equalize" a small parcel with larger and more-expensive parcels, and because they use other parcels' existing, vested nonconformance to excuse new, purely discretionary nonconformance (see part 3.1.3); and
4. The variances would help the applicant circumvent rules that he knew about before he bought the parcel (see part 3.1.4).

Because the applicant has not shown all four of the required elements, the Commission must deny his variances and his Development Permit.

5. Appendix: A Productive Conforming Project

While it is the applicant's burden to show that Zoning, acting in concert with some peculiarity of his parcel, prevents him from using it for *any* productive use allowed in the zone, we note that at least one such use *does* exist:



This project reaches 49.7% floor-area ratio while covering only 24.8% of the parcel (Santa Cruz County Code s.13.10.323(b)), satisfies the front setback requirements of s.13.10.323(e)(7), the rear-yard and side-yard setback requirements of s.13.10.323(b), the parking space quantity requirements of s.13.10.552(a)(1), the parking-space size requirements of s.13.10.554(a)(1), and the front-yard parking area limits of s.13.10.554(d). Two-space tandem parking is allowed by s.13.10.554(b). This project also meets the spirit of the newly-adopted Green Home Checklist, Community Design Issues A.3, "Design smaller homes".³⁶

Because this project provides over 99% of the s.13.10.323(b)- and (c)-allowed habitable space, it is – by any reasonable definition – a productive use of the parcel.

Endnotes

¹ See part 3.1.4 and note 33 (awareness of redtag and variance issues), and note 32 (parcel price history).

² "The party seeking the variance must shoulder the burden of demonstrating before the zoning agency that the subject property satisfies the requirements therefor". *Topanga Association for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506, 521.

³ This is the western deck at the front of the second story.

⁴ Staff Report to the Zoning Administrator, Application Number 09-0124, dated July 17, 2009, at pp.2, 6. The page numbers are from the online Staff Report at <http://sccounty01.co.santa-cruz.ca.us/planning/plnmeetings/PLNSupMaterial/Zoning/agendas/2009/20090717/002.pdf> . (The printed Staff Report does not include consistent page numbers). Pages 19-27 and pages 39-47 appear to be identical, so we use references to the 19-27 range.

⁵ *In the Matter of: Tony Snowden, Property Owner*, Case No. 07-015 (before George J. Gigarjian, Administrative Hearing Officer), 10/26/07

⁶ See note 2; see also *Topanga*, 11 Cal.3d at 518, "The variance can be sustained only if *all* applicable legislative requirements have been satisfied." (italics in original).

⁷ These criteria are similar to those in Cal. Gov. Code s.65906, with which they must be consistent. *Topanga Association for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506, 511-12.

⁸ See *Metcalf v. County of Los Angeles* (1944) 24 Cal.2d 267, 271:

As stated in *Thomas v. Board of Standards and Appeals*, 263 App. Div 352 [33 N.Y.S. 2d 219, 230], "the variances permitted by the Zoning Resolution are in the nature of safety valves to prevent the oppressive operation of the Zoning Regulations in specific instances....The history of all the litigation involving zoning regulations shows that to insure the validity of the zoning plan for an entire municipality, the legislative body must vest in some subordinate body the power to grant variances in appropriate cases...."

(emphasis added). See also *Hamilton v. Board of Supervisors of Santa Barbara County* (1969) 269 Cal.App.2d 64, 66 n.2 ("By proper adjustment of equities...zoning is brought into conformity with the constitutional limitations upon its use by assuring that it will deal similarly with all persons or properties under similar circumstances") (quoting Los Angeles Citizens Committee on Zoning Practices and Procedures).

⁹ (which was then – and is now – very similar to SCCC s.13.10.230(c)).

¹⁰ That is, Variance does not exist to "equalize" different parcels, or to bring all properties into "substantial parity", but only to restore the "substantial parity" of productive use when Zoning, in concert with some peculiarity of a parcel, deprives it of that use.

¹¹ The court's crucial premise that "[t]he proposed structure cannot be occupied in the first 23 vertical feet" appears to be in error. This error doesn't affect our arguments because we cannot reasonably determine how the court would have decided the case absent the error.

¹² *Committee to Save the Hollywoodland Specific Plan v. City of Los Angeles (Cutler)* (2008), 161 Cal.App.4th 1168, rehearing denied 4/1/2008, as modified 4/2/2008, review denied 7/9/2008, which distinguishes *Stolman*, addresses variances that are necessary to ameliorate a "substantial safety

hazard", *Hollywoodland*, 161 Cal.App.4th at 1184. That issue wasn't present in *Stolman* and isn't present in the case before the Commission today.

¹³ Staff Report at 19.

¹⁴ Staff Report at 4.

¹⁵ Staff Report at 19.

¹⁶ Staff Report at 21.

¹⁷ Staff Report at 21.

¹⁸ Staff Report at 21.

¹⁹ Staff Report at 20.

²⁰ The parcel is 40 feet by 40 feet. Staff Report at 6. The required first-story front setback would be 10 feet, per Santa Cruz County Code s.13.10.323(e)(7). The required side setbacks would be 5 feet each, and the required rear setback would be 15 feet, both per SCCC s.13.10.323(b).

²¹ See part 3.1.1.

²² *Craik*, 81 Cal.App.4th at 886 may implicitly disagree with this holding on the significance of existing nonconforming buildings.

²³ Staff Report at 21.

²⁴ Staff Report at 4.

²⁵ See Staff Report at 6. Note that on 8/21/2009, the ZA approved the applicant's amendment to move the western ~60% of the second story back an additional foot into the rear setback, so this aspect of the diagrams on page 6 of the Staff Report is no longer correct.

²⁶ Staff Report at 8, Section A, west view.

²⁷ Also note that the Staff Report's assertion that the new house is "more than 100 square feet smaller" than the existing one, Staff Report at 21, omits a critical qualification. The existing house is ~980 gross sq. ft., Staff Report at 2, all of which is, apparently, countable under SCCC s.13.10.323(c). The proposed house will have ~800 sq. ft. of s.13.10.323(c) countable space, Staff Report at 1, but also ~225 sq. ft. of garage and ~400 sq. ft. of basement, Staff Report at 6 (as revised at the 8/21/2009 ZA proceeding), neither of which are countable under s.13.10.323(c). This totals ~1425 gross sq. ft. – far larger than the existing house.

²⁸ See part 3.1.1.

²⁹ The issue might be different when the variance parcel contains a business competing with other area businesses. See, e.g., *Miller v. Board of Supervisors of the County of Santa Barbara* (1981) 122 Cal.App.3d 539. There is a strong argument that a parcel (particularly one housing extensive investments like the *Miller* variance parcel, *Miller*, 122 Cal.App.3d at 547-48) cannot be put to "productive use" if it cannot be developed to allow vigorous competition with similar businesses in the vicinity.

³⁰ See note 22.

³¹ Staff Report at 7 (basement added at 8/21/2009 ZA proceeding).

³² Code Compliance Parcel Research Report, for APN 027-111-33, run on 8/10/09, Parcel Profile Information/Parcel Transfers page. This source writes that the house was sold in 2005 for \$530,000, again in 2006 for \$885,000, was foreclosed in 2008, and was sold to the applicant for \$355,000 later in 2008.

³³ Code Compliance Parcel Research Report, for APN 027-111-33, run on 8/10/09, Enforcement Comments entry for 8/28/08, planner "LJ".

³⁴ Staff Report at 21.

³⁵ Staff Report at 19.

³⁶ Available at <http://www.sccoplanning.com/pdf/bldg/greenbuilding.pdf> .

October 10th, 2009

To: Planning Commissioners

RE: Application 09-0124
821 Carmel Street

rec
10/14/09

We are the current home owners of 821 Carmel Street. The purpose of this letter is to address issues raised by the neighbors regarding construction of a new 2 story home on this site.

Our purchase of this property was made with the knowledge that the house had recently been renovated however, was not structurally sound and did not comply with building codes. There is no foundation and the house remains on original posts set in 1921. The ground slopes down from the fence line to the house and rainwater collects underneath the structure. Ceiling heights are below habitable requirements averaging about 7 feet in height. Rotted wood and uncovered portions of the outer wall exist where new Tyvek and new siding were not yet put in place at the rear of the house. In addition, the existing structure does not conform to required setbacks, parking, etc. We discussed the issues regarding this property prior to purchase with Santa Cruz County. The construction performed by previous owners should have required coastal review and variance approval, however the previous owners, nor anyone else in the neighborhood requested such approval. Due to this unapproved rebuild, we understood that the previously grandfathered acceptance to the serious non-conformities would be lost and that the equivalent of 6 variances would be needed for the current house as it exists today.

We chose to purchase the property, tear down the existing structure and build a new home that meets the code and zoning requirements with two setback requests. Purchase was completed September 2, 2008. Discussions with the neighbor to the north at 311 9th Avenue led us to understand that he would block any new construction especially if it involved 2 stories since this would block his view from one window. While the neighbor at 311 9th Avenue did not have a view easement, we worked carefully with our architect to design the least impacting roof line possible. The approved plans call for a peak that is approximately 5 feet lower than either of the 2 adjacent neighbors 2 story homes.

We spent several months working with the county and our architect to come up with a plan that would be the least impacting to the neighbors, require the fewest variances and would not give us any privileges the neighbors do not already enjoy. The variance to allow the development within 5 feet of our rear fence is equivalent to the distance the neighbor to the north enjoys. Two story homes are also common in the area we are developing. The proposed structure is a modest 800 square foot home with minimal roof line. The design fits nicely with the homes of the neighborhood and will add considerable improvement value to the neighborhood as the existing structure is one of several poorly maintained in the area. After numerous design options and restrictions were implemented, the county staff allowed us to move forward with the best possible design solution given the substandard lot size.

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Zoning administrator approval was granted on 21 August. We believe any further restrictions to the rear setback of the second floor would prevent us from developing a reasonable home as we wouldn't be able to achieve a modest 800 square foot design, and incorporate required parking standards.


Setback encroachments are common in this neighborhood due to the small nature of existing lots. The three neighbors houses adjacent to our property (those appealing our decision) would not meet today's zoning standards, including second story setback encroachments. Examples include the house to our east which extends to our lot line, encroaching significantly into the setback area; the house to our west who's second story encroaches over 5 feet into their front second story setback; the house to their north, whose house comes to within a few feet of the rear of their property line. Therefore we believe our variances do not grant any special privileges, which our neighbors do not already enjoy, and is necessary given our substandard lot size.

Neighbors will argue that our second story impacts their light. To mitigate the impact of shading neighboring structures we incorporated a design with a maximum height of 21 feet, 7 feet below maximum conforming height but extending no more than 6 feet (5 feet for a portion) beyond what would be considered conforming to a rear setback for this 2nd story. A 28 foot tall structure has greater shade impact to its surroundings than a structure that is 7 feet shorter and 5 to 6 feet longer. We incorporated this design so the neighbors' structures would be less impacted by shade and light. During all of winter and fall, a taller structure would cast more shade, as well as during the mornings and evenings during the summer. **Therefore our current design causes less shading on surrounding structures than a conforming structure would cause** (diagram enclosed).

In advance of the public hearing the neighbor to the north organized a petition against any new development. In talking with some of the neighbors it was apparent they were spreading misinformation throughout the neighborhood in an effort to gather as many signatures as possible. Statements were made that no on site parking would be incorporated in the design and that the design included no second story setback from the property to the rear. Several neighbors that we were able to show our design, county staff report, and photo simulations to, were in favor of the current proposed development as approved by the zoning administrator after seeing these items.

Two of the three neighbors attempting to block our current design plan have large and imposing, non-conforming, 2 story homes which block considerable light and space from the smaller homes near them. The third neighbor's home is significantly non-conforming, poorly maintained and stands vacant. Our neighbors seem compelled to block our proposed design in an attempt to grant themselves a special privilege by keeping us from building a 2 story structure in a neighborhood where 2 story homes are common.


John Groat


Libby Gruender

CONFORMING
A STRUCTURE

PROPOSED
STRUCTURE

WINDOW

21 DEC, NOON
CONFORMING
SHADOW

21 DEC, NOON
PROPOSED
SHADOW

21 JUN, NOON
PROPOSED
SHADOW

21 JUN, NOON
CONFORMING
SHADOW

49.4°

21'

28'

6'

CONFORMING STRUCTURE CASTS GREATER SHADOW ANYTIME
SUN ELEVATION LESS THAN 49.4°

SUN BELOW 49.4° ALWAYS 23 SEP THROUGH 23 MAR

SUN BELOW 49.4 MAJORITY OF TIME 23 MAR THROUGH 23 SEP

3 9 3