

MONTEREY COUNTY ZONING ADMINISTRATOR

Meeting: April 26, 2007. Time:	Agenda Item No.:
Project Description: Approve Variance (PLN070104; DeLeon/Horn) for the rebuilding of a single family dwelling with attached Guesthouse that encroaches into front and side setbacks.	
Project Location: 17 Esquiline Road, southerly of De El Rio and Esquiline intersection, Carmel Valley.	APN: 189-343-005-000
Planning File Number: PLN070104	Name: De Leon/ Buck
Plan Area: Carmel Valley Master Plan	Flagged and staked: No, under construction
Zoning Designation: LDR/2.5-D-S [Low Density Residential, 2.5 acres per unit, in Design Control and Site Plan Review zoning districts].	
CEQA Action: Categorical Exemption per Section 15301, Class 1 (e) and 15302, Class 2	
Department: RMA - Planning Department	

RECOMMENDATION: Staff recommends that the Zoning Administrator:
Approve a Variance (PLN070104) for the rebuilding of a single family dwelling with attached Guesthouse that encroaches into front and side setbacks (see **Exhibit B**, Zoning Administrator Resolution).

PROJECT OVERVIEW:

“Remodel” versus “rebuild” of existing structure: The applicant was originally issued a permit for *remodeling* an existing, nonconforming structure as to setbacks under Section 21.68.040 B. 2. of Title 21 that allows for structural work to nonconforming residences when such work does not exceed fifty percent of the appraised value of the structure in any one year period. The remodel permit was issued to correct major electrical and plumbing violations per Code Enforcement file no. *CE03274* and included a 296 square foot addition to the bedroom. (What was originally thought to be the conversion of a storage building to a Guesthouse was corrected by a Guesthouse Deed Restriction applied to the attached unit because archival records are not clear as to whether permits were issued for the unit already served by a septic system on the property).

Upon issuance of the permit, it was discovered that complete replacement of the foundation requiring removal of walls would be required constituting *rebuilding* of a non-conforming structure encroaching into front and side setbacks. Inspections for new foundation work and the remodeling for the Guesthouse were signed-off under the original remodel permit (*BP061999*) and design approval (*DA060357*), as well as allowing continued work to remove walls for the main residence in order to pour a new foundation.

Stop Work Notice Posted: Work commenced prior to issuance of a demolition permit and was allowed to continue beyond the scope of work allowed under Building Permit *BP061999* and Design Approval *DA060357* for remodeling work and for the bedroom addition. Based on neighbor complaints that both the Guesthouse and Main Structure were removed in their entirety, new foundations poured, and new framing in progress, staff posted a Stop Work Notice on January 11, 2007 for work exceeding the permit for a remodel of a nonconforming structure.

Variance Request: Staff has determined the work done exceeds the scope of work under *BP061999* for the structural repairs and bedroom addition to correct Code Enforcement file no. *CE03274*. Said Building Permit was issued based on the limited scope of work allowed for a

legal, non-conforming structure under Section 21.68.040 B 2. of Title 21, Zoning Ordinance. By due process, a publicly-noticed hearing before the County's Zoning Administrator for a Variance is now required to allow continued **rebuilding** of the subject structure to encroach into zoning setbacks, and is the impetus for this hearing before the Zoning Administrator.

Staff Recommendation: Staff is recommending approval of the Variance because of the topographic limitations to the site—especially the over 30 percent slopes at the rear of the parcel that are retained by a stone-faced concrete wall and the established, mature oak trees that accommodate the existing footprint of the residence. Further, Environmental Health Division staff state that the existing septic system in the rear and a required replacement area in the front of the residence (*Monterey County Code Title 15, Chapter 20: Sewage Disposal*) is completely dependent on the existing location of the residence. The "Site Plan Review" ("S") zoning overlay for the property (Section 21.45.010 of Title 21) recognizes the unique natural resources of the area to be protected such as steep slopes and native vegetation that places site constraints on properties with the intent of not imposing undue restrictions on private property. Therefore, the granting of a Variance does not constitute a grant of privileges inconsistent with limitations upon other property owners in the vicinity.

OTHER AGENCY INVOLVEMENT: Related Building Permit no *BP061999* has been circulated to the following County agencies for review:

✓ Public Works Department	✓ Water Resources Agency
✓ Parks Department	✓ Carmel Valley Fire Protection District
✓ Environmental Health Division	

A separate request to waive fees for processing this Variance because of the lack of building inspection oversight of the work done was set for a Planning Commission hearing on April 25, 2007 (file no. PD070253). The design review of the proposed structure limited to correcting violations per Code Enforcement file no. *CE03274* was approved administratively on October 19, 2006 (file no. *DA060357*).

The Environmental Health Division's recommendation for approval of this project is completely dependent on the *existing* location of the nonconforming residence as stated under the staff recommendation above and in the letter from the Health Department (See **Exhibit D, EHD Letter dated February 27, 2007**).

David Lutes, Senior Planner
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March 28, 2007

cc Planning Commission Members (10); County Counsel; North County Fire Protection District; Public Works Department; Parks Department; Environmental Health Division; Water Resources Agency; Bob Schubert, Planning & Building Services Manager; David Lutes, Project Planner; Carol Allen; Rod DeLeon and Howard Buck, File *PLN070104*.

Attachments:

Exhibit A: Project Information	Exhibit D: EHD letter, dated February 27, 2007
Exhibit B: Chronology of Events with photos	Exhibit E: Site Plans
Exhibit C: Zoning Administrator Resolution	

This report was reviewed by Bob Schubert, Acting Planning and Building Service Manager

EXHIBIT A
PROJECT INFORMATION

EXHIBIT B

Summary of Chronology of Events De Leon / Buck; PD070104

1. A code violation (Code Enforcement file no. *CE030274*) was filed on the subject property in November of 2004 in order to correct major electrical and plumbing problems, and what was thought at that time to be the conversion of a storage building to a habitable dwelling. The structure is a legal nonconforming residence only as to yard setback regulations.
2. Building plans for remodeling the legal, non-conforming structure submitted on September 11, 2006 to the RMA – Building Division to correct violations, including the suspected conversion of a storage room to a Guesthouse.
3. After research into the status the Guesthouse, it was found that archival records are not clear as to whether permits were issued, although served by an existing septic system on the property. Therefore, the applicant was required to record a Guesthouse Deed Restriction, recorded October 6, 2006 (*Document 2006087582 as found in the Official Records of the Monterey County Recorder's Office*).
4. Design Approval of structure administratively approved on October 10, 2006 (*DA060357*).
5. Applicant issued a building permit on October 23, 2006 for a **remodel** of the non-conforming residence to correct the electrical and plumbing problems and to allow enlargement of the structure by 296 square feet as permitted under Section 21.68.040 A of Title 21, Zoning Ordinance pertaining to the enlargement and structural alteration of a nonconforming structure (RMA – Building Permit file no. *BP061999*, issued October 23, 2006).
6. On January 11, 2007, a Stop Work Notice was posted on the construction site based on the finding that the structure was removed in its entirety, new foundations poured, and new framing in progress—all exceeding the scope of work allowed under Building Permit *BP061999*. Upon receiving a neighbor's complaint, staff determined the work done exceeded the remodeling permit issued for structural repairs and foundation work under Section 21.68.040 B 2. of Title 21, Zoning Ordinance. The Monterey County Zoning Ordinance, Chapter 21.72 – Variances, requires a publicly-noticed hearing before the Zoning Administrator for a Variance to allow structural encroachment into zoning setbacks.
7. A public hearing on the Applicant's Fee Waiver Request is set for a Planning Commission Hearing on April 25, 2007. A public hearing on the Applicants request for a Variance is set for a Zoning Administrator Hearing on April 26, 2007.

EXHIBIT C

FINDINGS AND EVIDENCE

1. **FINDING:** **CONSISTENCY** - The Project, as conditioned is generally consistent with applicable plans and policies of the Carmel Valley Master Plan which designates the subject parcel as appropriate for residential development, but is inconsistent with the development standards for residential setbacks for the areas designated Low Density Residential (LDR) district as found under Section 21.14.060 C. 1. of the Monterey County Zoning Ordinance (Title 21). Nonetheless, the purpose of the Site Plan Review District (S) overlay in this same area is to provide district regulations for review of development in those areas of the county where development, by means of its location has the potential to adversely affect or be adversely affected by natural resources or site constraints without imposing undue restrictions on private property.

- EVIDENCE:**
- (a) RMA- Planning staff has reviewed the project as contained in the application and accompanying materials for consistency with the Carmel Valley Master Plan and has determined the project is consistent with this Plan which designates this area as appropriate for residential development, allowing for a single family home and guesthouse.
 - (b) Staff has reviewed the project as contained in the application and accompanying materials for conformity with the Monterey County Zoning Ordinance (Title 21) and has determined that the project is inconsistent with the development standards for a Low Density Residential District as to setbacks. The minimum front yard setback of 30 feet is encroached by approximately 8 feet-6inches of the structure, leaving a setback of only 21 feet-6 inches. The minimum side yard setback requiring 10% of the average lot width, or approximately 12 feet, is overlapped by a corner of the guesthouse by up to 7 feet-6 inches, leaving only a 4 foot-6 inch setback. The project for a single family home and guesthouse are allowed uses, in accordance with Section 20.14.040.
 - (b) The project complies with the regulations for the already approved guesthouse (Guesthouse Deed Restriction recorded October 6, 2006, Document 2006087582 as found in the Official Records of the Monterey County Records Office) in accordance with Section 21.64.020.C, but the corner of the reconstructed structure, attached to the main dwelling, encroaches into the side yard setback by approximately 7 feet-6 inches.
 - (c) The parcel is zoned Low Density Residential, 2.5 acres/acre, in a Design Control District and Site Plan Review District ("LDR/2.5-D-S"). Except for structural encroachment into the front and side setbacks, the project is in compliance with Site Development Standards for a Low Density Residential District in accordance with Section 21.14.060. With the Site Plan Review District ("S") zoning overlay, the request for a Variance is reviewed primarily in terms of any potential for the structure to adversely affect or be adversely affected by natural resources or site constraints without imposing undue restrictions on private property, pursuant to Section 21.45.010 of Title 21, Zoning Ordinance (see Finding 5 below).
 - (d) The RMA-Director of Planning approved the design of the structure administratively based on the remodeling of the structure pursuant to

Building Permit no. *BP061999*, which is essentially similar to the previously existing structure at the site.

- (e) The application, plans, photos and support materials submitted by the project applicant to the Monterey County Planning and Building Inspection Department for the proposed development, found in Project File PLN070104.

2. **FINDING: SITE SUITABILITY** - The site is suitable for the use proposed.

EVIDENCE: (a) The project has been reviewed for suitability by the RMA-Planning Department, Building Inspection, Public Works, Water Resources Agency, Environmental Health, and Carmel Valley Fire District at the time of circulation of the Building Permit (*BP061999*) to correct Code Violation *CE03274*. It is only the issue of the amount of reconstruction of a nonconforming structure as to setbacks that are prompting a public hearing for a Variance.

- (b) The application, plans, and photographs of the site taken by both the applicant and staff found in Project Files *PLN070104*, *BP061999* and *DA DA060357*.

3. **FINDING: CEQA (Exempt)** - The project is exempt from environmental review.

EVIDENCE: (a) CEQA Guidelines Section 15303 categorically exempts single family dwellings.

- (b) No adverse environmental effects were identified during staff review of the development application.

- (c) Development is largely contained in an already disturbed area of the property. The structure is presently under construction with a new foundation and partial framing of walls. No unusual circumstances are related to the project except for the *existing* back yard concrete wall with stone-facing that retains slopes over 30 percent, thereby limiting areas for placement of the building envelope and septic system at the site.

4. **FINDING: VIOLATIONS** - The subject property is in compliance with all rules and regulations pertaining to zoning uses, subdivision and any other applicable provisions of the County's zoning ordinance. Code violation *CE030274* for major electrical and plumbing problems is being corrected with issuance of Building Permit *BP061999*, although a Stop Work Order was issued during construction because of work exceeding the amount of structural alteration of a nonconforming structure.

EVIDENCE: The subject Variance addresses the issue of rebuilding a nonconforming structure in violation of Section 21.68.040 B 2. of Title 21, Zoning Ordinance.

5. **FINDING: VARIANCE (Special Circumstances)** - Because of special circumstances applicable to the subject property, including the size, shape, topography, location of the lot, or the surrounding area, the strict application of Section 21.14.060 C 1 of Title 21, the County's Zoning Ordinance, as it pertains to site development standards, is found to deprive the subject property of privileges enjoyed by other property owners in the vicinity under an identical zoning classification.

EVIDENCE: (a) The intent of the setback regulations is to meet Building Code and Fire Code requirements. With the Site Plan Review District ("S") zoning

overlay in the area of the subject property, staff reviews the natural resources or site constraints in terms of any potential for the structure to adversely affect or be adversely affected by natural resources or site constraints without imposing undue restrictions on private property pursuant to Section 21.45.010 of Title 21, Zoning Ordinance. The 14,204 square foot parcel limits the location of the building site by (1) the near triangular shaped parcel; (2) the over 30 percent slopes at the rear of the parcel that are retained by a stone-faced concrete wall; (3) the mature oak trees surrounding the historical footprint of the residence; and (4) the existing initial septic system in the rear of the residence and a required replacement area in the front of the residence as recommended by the Environmental Health Division. These four factors constrain the footprint location and configuration of the building.

- (b) The Environmental Health Division's approval of this project is completely dependent on the *existing* location of the nonconforming residence to maintain room for an initial septic system in the rear of the residence and a required replacement area in the front of the residence as stated in the Health Department's letter dated February 27, 2007 (see **Exhibit D**).
- (c) The project meets all other zoning requirements regarding height and lot coverage.
- (d) The application, plans, photos and support materials submitted by the project applicant to the Monterey County Planning and Building Inspection Department for the proposed development, found in Project File PLN070104.

6. FINDING: VARIANCE (Special Privileges) - The finding for a variance to encroach the setbacks allowed for a Low Density Residential ("LDR") district is combined with the overlay regulations for a Site Plan Review District ("S") and is a recognition of the unique natural resources and site constraints in the area that must address any potential for the structure to adversely affect or be adversely affected by natural resources or site constraints without imposing undue restrictions on private property pursuant to Section 21.45.010 of Title 21. If the regulations for the "S" District differ from the regulations for the "LDR" district, the provisions of the "S" District will apply pursuant to Section 21.45.020 A. of Title 21, Zoning Ordinance. Therefore, applying the "S" District regulations shall not constitute a grant of privileges inconsistent with the limitations upon other property owners in the vicinity also subject to the "S" District regulations and zone in which such property is situated.

- EVIDENCE:**
- (a) The natural resources at the site supersede consideration of special privileges not enjoyed by others. The re-construction follows the same original building footprint (1) to avoid removal of existing mature oak trees; (2) to avoid development on the steep slopes at the rear of the lot; and (3) to allow space for the existing initial septic system in the rear of the residence and a required replacement area in the front of the residence pursuant to Monterey County Code Title 15, Chapter 20: Sewage Disposal.
 - (b) Section 21.45.040 A., of Title 21, Regulations for the "S" District, requires construction of structures to be approved by the Appropriate Authority,

which in the case of the De Leon/Buck project, is the Zoning Administrator authorized to hear findings for a Variance.

(c) Materials and documents in Project File No. PLN070104.

7. **FINDING: VARIANCE (Authorized Use)** – The Variance shall not be granted for a use or activity which is not otherwise expressly authorized by the zone regulation governing the parcel of property.

EVIDENCE: (a) The project for a single family dwelling and Guesthouse is an allowed use under the property's Low Density Residential designation.

8. **FINDING: HEALTH AND SAFETY** - The establishment, maintenance or operation of the project applied for will not under the circumstances of this particular case, be detrimental to the health, safety, peace, morals, comfort, and general welfare of persons residing or working in the neighborhood of such proposed use, or be detrimental or injurious to property and improvements in the neighborhood or to the general welfare of the County.

EVIDENCE: (a) Preceding findings and supporting evidence.

9. **FINDING: APPEALABILITY** - The decision on this project is appealable to the Planning Commission.

EVIDENCE: (a) Section 21.80.040. B of Title 21, the Monterey County Zoning Ordinance.

Resource Management Agency - Planning Department Condition Compliance & Mitigation Monitoring and Reporting Plan	Project Name: De Leon / Buck File No: <u>PLN070104</u> APNs: _____ Approval by: <u>Zoning Administrator</u> Date: _____
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**Monitoring or Reporting refers to projects with an EIR or adopted Mitigated Negative Declaration per Section 21081.6 of the Public Resources Code.*

Permit Cond. Number	Mitig. Number	Conditions of Approval and/or Mitigation Measures and Responsible Land Use Department	Compliance or Monitoring Actions to be performed. Where applicable, a certified professional is required for action to be accepted.	Responsible Party for Compliance		
1.		PD001 - SPECIFIC USES ONLY This permit (PLN070104) allows a Variance to rebuild a non-conforming single family dwelling with an attached guesthouse and carport totaling 2,651 square feet that encroaches into back and side yard setbacks. The property is located at 17 Esquiline Road, southerly of De El Rio and Esquiline Road intersection, Carmel Village (Assessor's Parcel Number 189-343-005-000), in the Carmel Valley Master Plan Area. This permit was approved in accordance with County ordinances and land use regulations subject to the following terms and conditions: Neither the uses nor the construction allowed by this permit shall commence unless and until all of the conditions of this permit are met to the satisfaction of the Director of the RMA - Planning Department. Any use or construction not in substantial compliance with the terms and conditions of this permit is a violation of County regulations and may result in modification or revocation of this permit and subsequent legal action. No use or construction other than that specified by this permit is allowed unless additional permits are approved by the appropriate authorities. To the extent that the County has delegated any condition compliance or mitigation monitoring to the Monterey County Water Resources Agency, the Water Resources Agency shall provide all information requested by the County and the County shall bear ultimate responsibility to ensure that conditions and mitigation measures are properly fulfilled. (RMA - Planning Department)	Adhere to conditions and uses specified in the permit.	Owner/ Applicant		

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**RMA – PLANNING DEPARTMENT
SPECIFIC CONDITIONS OF APPROVAL**

2.		PD002 - NOTICE-PERMIT APPROVAL The applicant shall record a notice which states: "A permit (Resolution 070104) was approved by the Zoning Administrator for Assessor's Parcel Number 189-343-005-000 on (April 26, 2007). The permit was granted subject to ____ conditions of approval which run with the land. A copy of the permit is on file with the Monterey County RMA - Planning Department." Proof of recordation of this notice shall be furnished to the Director of the RMA - Planning Department prior to issuance of building permits or commencement of the use. (RMA - Planning Department)	Proof of recordation of this notice shall be furnished to the RMA - Planning Department.	Owner/ Applicant		
3.		PDSP001 NON-STANDARD CONDITION The applicant shall submit revised Building Permit Plans to address an updated scope of work for the reconstruction of the main residential unit on site. (RMA – Building Department)	Submit the revised plans to the RMA-Planning Department for review and approval.	Owner/ Applicant		
4.		PD011 – TREE AND ROOT PROTECTION Trees which are located close to the construction site(s) shall be protected from inadvertent damage from construction equipment by fencing off the canopy drip lines and/or critical root zones (whichever is greater) with protective materials, wrapping trunks with protective materials, avoiding fill of any type against the base of the trunks and avoiding an increase in soil depth at the feeding zone or drip-line of the retained trees. Said protection, approved by a certified arborist, shall be demonstrated prior to issuance of building permits subject to the approval of the RMA – Director of Planning. If there is	Submit evidence of tree protection to the RMA - Planning Department for review and approval.	Owner/ Applicant		
			Submit on-going evidence that tree protection measures are in place through out grading and construction phases. If damage is possible, submit an interim report prepared by a certified arborist.	Owner/ Applicant/ Arborist		

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		any potential for damage, all work must stop in the area and a report, with mitigation measures, shall be submitted by a certified arborist. Should any additional trees not included in this permit be harmed, during grading or construction activities, in such a way where removal is required, the owner/applicant shall obtain required permits. (RMA - Planning Department)	Submit photos of the trees on the property to the RMA – Planning Department after construction to document that tree protection has been successful or if follow-up remediation or additional permits are required.	Owner/ Applicant		
5.		PD012(A) - LANDSCAPE PLAN AND MAINTENANCE (SINGLE FAMILY DWELLING ONLY) The site shall be landscaped. At least three (3) weeks prior to occupancy, three (3) copies of a landscaping plan shall be submitted to the Director of the RMA - Planning Department. A landscape plan review fee is required for this project. Fees shall be paid at the time of landscape plan submittal. The landscaping plan shall be in sufficient detail to identify the location, species, and size of the proposed landscaping materials and shall include an irrigation plan. The plan shall be accompanied by a nursery or contractor's estimate of the cost of installation of the plan. Before occupancy, landscaping shall be either installed or a certificate of deposit or other form of surety made payable to Monterey County for that cost estimate shall be submitted to the Monterey County RMA - Planning Department. All landscaped areas and fences shall be continuously maintained by the applicant; all plant material shall be continuously maintained in a litter-free, weed-free, healthy, growing condition. (RMA – Planning Department)	Submit landscape plans and contractor's estimate to the RMA - Planning Department for review and approval.	Owner/ Applicant/ Licensed Landscape Contractor/ Licensed Landscape Architect		
			All landscaped areas and fences shall be continuously maintained by the applicant; all plant material shall be continuously maintained in a litter-free, weed-free, healthy, growing condition.	Owner/ Applicant		
			All landscaped areas and fences shall be continuously maintained by the applicant; all plant material shall be continuously maintained in a litter-free, weed-free, healthy, growing condition.	Owner/ Applicant		
6.		PD014(A) – LIGHTING – EXTERIOR LIGHTING PLAN All exterior lighting shall be unobtrusive, down-lit, harmonious with the local area, and constructed or located so that only the intended area is illuminated and off-site glare is fully controlled. The applicant shall submit 3	Submit three copies of the lighting plans to the RMA - Planning Department for review and approval. Approved lighting plans shall be incorporated into final building plans.	Owner/ Applicant		

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		copies of an exterior lighting plan which shall indicate the location, type, and wattage of all light fixtures and include catalog sheets for each fixture. The lighting shall comply with the requirements of the California Energy Code set forth in California Code of Regulations, Title 24, Part 6. The exterior lighting plan shall be subject to approval by the Director of the RMA - Planning Department, prior to the issuance of building permits. (RMA – Planning Department)	The lighting shall be installed and maintained in accordance with the approved plan.	Owner/ Applicant		
			The lighting shall be installed and maintained in accordance with the approved plan.	Owner/ Applicant		
7.		PD035 - UTILITIES - UNDERGROUND All new utility and distribution lines shall be placed underground. (RMA - Planning Department; Public Works)	Install and maintain utility and distribution lines underground.	Owner/ Applicant		
END OF CONDITIONS OF APPROVAL						

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