MONTEREY COUNTY ZONING ADMINISTRATOR

Meeting: June 28, 2007 **Time:** 1:45pm	**Agenda Item No.:** 4
Project Description: Combined Development Permit including after-the-fact permits to allow a 138 square foot courtyard/den conversion and a 45 square foot master bedroom addition constructed without permits. Entitlements consist of: a Variance to increase the maximum lot coverage from 35% to 42 % for the unpermitted additions; a Variance to increase floor area ratio (FAR) from 45% to 48% for the unpermitted additions and the construction of a 35 square foot stairway to allow internal access to the existing attic; a Coastal Development Permit to allow development on a property with a positive archaeological report, and Design Approval.	
Project Location: 26291 Ocean View Avenue, Carmel	**APN:** 009-431-030-000
Planning File Number: PLN060484	**Name:** Guy and Irene Laverty, Owners Chris Boqua, Representative
Plan Area: Carmel Area Land Use Plan	**Flagged and staked:** Yes
Zoning Designation: "MDR/2-D (18) (CZ)" [Medium Density Residential, two units per acre, with Design Control Overlay, maximum height of 18 feet, in the Coastal Zone.]	
CEQA Action: Exempt per CEQA Section 15270(a), projects which a public agency disapproves	
Department: RMA - Planning Department	

This item was continued from May 10, 2007

RECOMMENDATION:
Staff recommends that the Zoning Administrator deny the Combined Development Permit (PLN060484/Laverty) based on the Findings and Evidence **(Exhibit C**).

PROJECT OVERVIEW:
The property owners enclosed a patio/courtyard (138 square feet) and added 45 square feet to a bedroom without permits on a home that currently exceeds building site coverage. As a result of these additions, the residence exceeds the allowable floor area ratio (FAR) and increased the previously approved legal non-conforming building site coverage from 38% to 42%. This application requests after-the-fact permits (including Variances) to remedy an existing code violation (CE 060359) resulting from these additions as well as the construction of a 35 square foot stairway to facilitate internal access to the existing attic above the garage. Further modifications include design changes to install two dormers and change the roof pitch from flat to sloped on those areas where the unpermitted additions occurred. As designed, the attic will continue to be utilized for storage purposes and the added stairway is not designed to create additional livable space.

In reviewing the project in its entirety, staff has determined that the required findings cannot be made to support either Variance. There are no unique site conditions and granting a Variance would establish a privilege not afforded other similar properties in the vicinity. While staff recognizes that a number of houses in the vicinity exceed FAR and building site coverage, these approvals were granted prior to adoption of the 1983 Local Coastal Program (LCP). Since that time, the primary goal in processing new projects is to ensure that all properties are brought into greater conformance with current standards. Because the Laverty project would exacerbate rather than alleviate the existing non-conforming nature of the property, and the proper findings to support the requested Variances cannot be made, staff recommends denial of the project. However, should the applicant restore the courtyard/den conversion, staff could support a

Combined Development Permit to allow the bedroom addition and internal stairway because these can be added within the allowable FAR with no impact to building site coverage

For a detailed project discussion please see **Exhibit B.**

OTHER AGENCY INVOLVEMENT:

- ✓ Carmel Highlands Fire Protection District
- ✓ Public Works Department
- ✓ Environmental Health Division
- ✓ Water Resources Agency

The above checked agencies and departments have reviewed this project.

The project was reviewed by the Carmel Highlands Land Use Advisory Committee (LUAC) on October 16, 2006. The LUAC recommended approval of the project 5-0 while noting a concern that the home exceeds the allowable area.

Note: The decision on this project is appealable to the Board of Supervisors and the California Coastal Commission.

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cc: Zoning Administrator; Carmel Highlands Fire Protection District; Public Works Department; Environmental Health Division; Water Resources Agency; Carl Holm, Interim Planning & Building Services Manager; Shandell Brunk, Planner; Carol Allen; Guy and Irene Laverty, Property Owners; Chris Boqua, Representative, Planning File PLN060484.

Attachments:	Exhibit A	Project Data Sheet
	Exhibit B	Project Discussion
	Exhibit C	Recommended Findings and Evidence
	Exhibit D	LUAC Meeting Minutes
	Exhibit E	Site Plan, Elevations, Floor Plans

This report was reviewed by Carl Holm, AICP, Acting Planning and Building Services Manager.

EXHIBIT B
PROJECT DISCUSSION
PLN060484/Laverty

Background

Building Inspection Department files indicate that the residence was constructed in 1973 (BP24760) prior to certification of the Local Coastal Program. As originally permitted, development of the site included a 1,271 square foot residence, 223 square foot attic, and 303 square foot attached garage; creating a floor area ratio (FAR) of 43% and building site coverage of 38%. Building site coverage for the original residence is now defined as legal non-conforming as it exceeds the current standard of 35%. The home was subsequently remodeled in 1988 (BP041139) without a change in FAR or building site coverage. The permit did not include issuance of a Variance to address the non-conforming site coverage.

In January 2006, the applicant came forward with a proposal for a Design Approval to allow minor alterations to the property which included the installation of two dormers, a change in roof pitch from flat to sloped over the den, master bedroom, front entryway, and living area as well as the installation of a 35 square foot stairway to allow internal access to the existing attic/storage area. Staff's research of the application discovered that the site plan submitted by the applicant did not match previously approved building permits for the property. Subsequently, staff determined that, between 1988 and 2006, a series of minor additions had been constructed on the property without the benefit of permits. These additions include a 138 square foot courtyard/den conversion, and a 45 square foot master bedroom addition for a total expansion of 183 square feet. Table 1 below indicates how the non-permitted additions exceed the allowable FAR and building site coverage as dictated by the "MDR/2" zoning district.

Table 1

Floor Area Ratio		
Previously Approved	Non-Permitted Addition	Allowed by Code
1,797 s.f.	1,980 s.f.	45%
43%	47%	
Building Site Coverage		
Previously Approved	Non-Permitted Addition	Allowed by Code
1,574 s.f.	1,757 s.f.	35%
38%	42%	

Because development occurred on the site without the benefit of permits, a code enforcement case (CE060359) was initiated on the subject property.

Proposed Project

Processing of the application requires the issuance of two Variances; one to allow the property to exceed the maximum FAR and one to exceed maximum building site coverage to legalize previously constructed additions as well as permit the construction of the internal stairway. While the stairway will provide internal access to the attic, the applicant contends that the attic will remain as a storage area and not additional livable space since it only has a 5-foot ceiling height. If granted, the Variances would allow the previously constructed additions to remain without requiring the applicant to restore the property. The application further includes modification of the roof to better reflect the original house design. Table 2 on the following page illustrates proposed FAR and building site coverage with the assumption that the entire project is approved.

Table 2

Floor Area Ratio			
Previously Approved	Non-Permitted Addition	Internal Stairway	Allowed by Code
1,797 s.f.	1,980 s.f.	1,997 s.f.	45%
43%	47%	48%	
Building Site Coverage			
Previously Approved	Non-Permitted Addition	Internal Stairway	Allowed by Code
1,574 s.f	1,757 s.f.	1,757 s.f.	35%
38%	42%	42%	

Approval of the project in its entirety would result in exceeding the allowed FAR by 3% and building site coverage by 7%.

Variance Request

In accordance with Section 20.78 of the Monterey County Coastal Implementation Plan (Part 1), a Variance may only be granted if all three of the required findings can be made:

1. Because of special circumstances applicable to the subject property, including size, shape, topography, location or surroundings, the strict application of this Title is found to deprive the property of privileges enjoyed by other properties in the vicinity and under identical zone classification;
2. The Variance does not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and zone in which such property is situated, and
3. The proposed use or activity is expressly authorized by the zone regulation governing the parcel of property.

Special Circumstance The parcel is approximately 4,152 square feet (0.09 acres) in size, and is located within an existing developed subdivision adjacent to the City of Carmel-by-the-Sea. The parcel maintains a shape and size consistent with adjacent neighbors, is devoid of sensitive vegetation, and considered level with no notable variations in slope. Therefore, staff determined that no special circumstances exist on the parcel.

Special Privilege In an effort to encompass the proper zone classification and vicinity and to determine if granting the Variance would constitute a special privilege, staff compared the proposed Variance requests against historic requests for all parcels located in the Carmel Area zoned MDR/2-D (18) that were subsequently granted a Variance allowing the property to exceed either FAR or building site coverage. In addition, staff limited consideration to Variances granted after the adoption of the Local Coastal Program (1983) when the current development standards were established.

Staff's research identified a total of seven (7) Variances consistent with the above criteria; two (2) of which were denied. The five (5) remaining Variances were granted approval due to the legal non-conforming nature of the properties. In each case, staff was able to support approval of these Variances because the proposals included a reduction of either FAR or building site coverage, or the approval corrected an existing non-conforming condition thereby bringing the properties into greater conformance with the applicable zoning district **(See Finding 5).**

As proposed, the Laverty project includes a request to exceed both FAR and building site coverage with no planned reduction. While the property is considered legal non-conforming due to permitted building site coverage, the Variances are requested to allow additions made without the benefit of permits, thereby exacerbating the legal non-conforming nature of the property. Based upon this information, and project materials located in file PLN060484, staff finds that approval of the project may constitute granting of a special privilege.

Because the appropriate findings necessary to support either Variance cannot be made, it is staff's recommendation that the Zoning Administrator deny the project. However, upon denying the project a viable alternative must be found to remedy the existing code violation. It should be noted that restoration of the courtyard/den conversion would alleviate the need for both requested Variances, allow the master bedroom addition to remain upon the issuance of a Combined Development Permit, and facilitate the proposed interior stairway construction.

EXHIBIT C
RECOMMENDED FINDINGS AND EVIDENCE
PLN060484/Laverty

1. **FINDING:** **INCONSISTENCY** – The project, as proposed, does not conform to, or is not consistent with, the policies, requirements, and standards of the Monterey County General Plan, the Carmel Area Land Use Plan, the Carmel Area Coastal Implementation Plan (Part 4), and the Monterey County Coastal Implementation Plan (Part 1).

   EVIDENCE: (a) The property is located at 26291 Ocean View Avenue, Carmel (Assessor's Parcel Number 009-431-030-000), Carmel Area Land Use Plan. The parcel is zoned Medium Density Residential/ two (2) units per acre with Design Control Overlay, 18 foot maximum height limit, in the Coastal Zone ("MDR/2-D (18) (CZ)"). The subject property complies with all the rules and regulations pertaining to zoning uses and any other applicable provisions of Title 20. In accordance with Section 20.12.060 of the Monterey County Coastal Implementation Plan (Part 1), floor area ratio (FAR) in the MDR/2 Zoning District shall not exceed 45% while building site coverage shall not exceed 35%. As originally permitted, development of the site included a 1,271 square foot residence, 223 square foot attic, and 303 square foot attached garage; creating a floor area ratio (FAR) of 43% and building site coverage of 38%.

   (b) Sometime between 1988 and 2006, a 45 square foot bedroom addition and 138 square foot courtyard/den conversion were constructed on the parcel without the benefit of a permit, design review, or an Archaeological Report as required by Section 20.146.090 of the Carmel Area Coastal Implementation Plan (Part 4). Construction of these additions increased the existing FAR from 43% to 47%, while increasing the existing legal non-conforming building site coverage from 38% to 42% without the issuance of a Variance.

   (c) The project planner conducted a site visit on April 9, 2007 to verify that the project on the subject parcel conforms to the plans listed above.

   (d) The project was reviewed by the Carmel Highlands Land Use Advisory Committee (LUAC) on October 16, 2006. The LUAC recommended approval of the project 5-0 while noting a concern that the project exceeds the allowable area.

   (e) The application, project plans, and related support materials submitted by the project applicant to the Monterey County RMA - Planning Department for the proposed development found in Project File No. PLN060484.

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

   EVIDENCE: (a) The project has been reviewed for site suitability by the following departments and agencies: RMA - Planning Department, Carmel Highlands Fire Protection District, Public Works, Environmental Health Division, and Water Resources Agency. There has been no indication from these departments/agencies that the site is not suitable for the proposed development.

   (b) A Technical report by outside archaeological consultants indicated that there are no physical or environmental constraints that would indicate that

the site is not suitable for the use proposed. County staff concurs. The following report has been prepared:

- *"Preliminary Archaeological Report for Assessor's Parcel 009-431-030-000" (LIB060616*) prepared by Mary Doane and Gary Breschini, Salinas, CA, September 12, 2006.

(c) Materials in Project File No. PLN060484.

3. **FINDING:** **CEQA –** The project is statutorily exempt from environmental review.

EVIDENCE: (a) CEQA Guidelines §15270 (a) exempts projects in which a public agency rejects or disapproves.
(b) See preceding and following findings and supporting evidence.
(c) Materials in project file PLN060484.

4. **FINDING:** **VARIANCE (Special Circumstance)** – A special circumstance does not exist on the property allowing staff to support the issuance of the requested Variances.

EVIDENCE: (a) The parcel is approximately 4,152 square feet (0.09 acres) in size, and is located within an existing developed subdivision adjacent to the City of Carmel-by-the-Sea.
(b) The parcel maintains a shape and size consistent with adjacent neighbors, is devoid of sensitive vegetation, and contains no notable variations in slope.
(c) Prior to construction of the master bedroom addition and the courtyard/den conversion, the residence was consistent with allowable floor area ratio (FAR) of 45%. At 38%, existing building site coverage is considered legal non-conforming as it was approved prior to the adopted Local Coastal Program (LCP).
(d) Staff site visit on April 9, 2007.
(e) Application and photos in project file PLN060484.

5. **FINDING:** **VARIANCE (Special Privilege)** – Granting the Variances as requested may constitute a special privilege.

EVIDENCE: (a) Building Inspection Department files indicate that the residence was constructed in 1973 (BP24760) prior to certification of the Local Coastal Program. As originally permitted, development on the site included a 1,271 square foot residence, 223 square foot attic, and 303 square foot attached garage; creating a floor area ratio (FAR) of 43% and building site coverage of 38%.
(b) Sometime between 1988 and 2006, a 45 square foot bedroom addition and 138 square foot courtyard/den conversion were constructed on the parcel without the benefit of a permit, design review, or an Archaeological Report as required by Section 20.146.090 of the Carmel Area Coastal Implementation Plan (Part 4). Construction of these additions increased the existing FAR from 43% to 47%, while increasing the existing legal non-conforming building site coverage from 38% to 42%. A code enforcement violation (CE 060359) was subsequently initiated on the property.
(c) The proposed project includes two (2) Variances to remedy the code violation, approval of which will allow the structure to exceed both FAR and building site coverage.

(d) In an effort to determine if granting the Variance would constitute a special privilege, staff compared the proposed Variance requests against historic requests for all parcels located in the Carmel Area zoned MDR/2-D (18) that were subsequently granted a Variance allowing the property to exceed either FAR or building site coverage. In addition, staff limited consideration to Variances granted after the adoption of the Local Coastal Program (1983) when the current development standards were established.

(e) A total of five (5) Variances were granted consistent with the above parameters; however, staff was able to support approval of these Variances because the proposals included a reduction of either FAR or building site coverage, or the approval corrected an existing non-conforming condition thereby bringing the properties into greater conformance with the applicable zoning district.

1. PLN020126 (009-403-010-000)

Variance to exceed building site coverage

Variance allowed the property to maintain building site coverage of 38.8%. Project corrected an existing non-conforming condition by structurally attaching the 559 square foot guesthouse to the existing residence.

2. ZA93062 (009-422-002-000)

Variance to exceed FAR and building site coverage

Existing residence was considered legal non-conforming as it exceeded both FAR and building site coverage. Variance was supported due to the proposed reduction in floor area ratio from 72% to 69%.

3. PLN970555 (009-422-015-000)

Variance to exceed FAR

The project includes the removal of a second story deck and remodeling of an existing two story single family dwelling. The Variance was granted due to the overall reduction in lot coverage from 36.9% to 33.4%.

4. PLN040559 (009-432-013-000)

Variance to exceed FAR and building site coverage

The proposed project includes remodeling an existing single family dwelling considered legal non-conforming pursuant to building site coverage and FAR. The Project included a reduction in existing building site coverage from 39.6% to 36.9%

5. PLN020284 (009-401-007-000)

Variance to exceed FAR and building site coverage

The project included the removal of an existing sunroom which allowed a net reduction in site coverage from 44% to 38% and floor area ratio from 70% to 65%.

(f) Unlike the Variances reviewed above, approval of the proposed project would exacerbate the existing legal non-conforming nature of the property by increasing the previously permitted building site coverage from 38% to 42% while allowing the structure to exceed FAR and building site coverage with no planned reduction.

(g) The violation may be remedied with the restoration of the courtyard/den conversion and the approval of a Combined Development Permit and to allow the 45 square foot bedroom addition and internal stairway addition while alleviating the need for either Variance.

(h) Materials in project file PLN060484.

6. **FINDING:** **PUBLIC ACCESS -** The project is in conformance with the public access and public recreation policies of the Coastal Act and Local Coastal Program, and does not interfere with any form of historic public use or trust rights (see 20.70.050.B.4). No access is required as part of the project as no substantial adverse impact on access, either individually or cumulatively, as described in Section 20.70.050.B.4.c of the Monterey County Coastal Implementation Plan, can be demonstrated.

EVIDENCE (a) The subject property is not described as an area where the Local Coastal Program requires access.

(b) The subject property is not indicated as part of any designated trails or shoreline access as specified in Figures 15 or 16 of the Del Monte Forest Area Land Use Plan.

(c) No evidence or documentation has been submitted or found showing the existence of historic public use or trust rights over this property.

(d) Staff site visit on April 9, 2007.

7. FINDING: **VIOLATION -** The subject property is not in compliance with all rules and regulations pertaining to zoning uses, subdivision, and any other applicable provisions of the County's zoning ordinance.

EVIDENCE: (a) Staff reviewed Monterey County RMA - Planning Department and RMA Building Services Department Monterey County records and determined that a pending code enforcement case (CE060359) exists on the property. The proposed application includes discretionary actions designed to alleviate the existing violation.

(b) Building Inspection Department files indicate that the residence was constructed in 1973 (BP24760) prior to certification of the Local Coastal Program. As originally permitted, development of the site included a 1,271 square foot residence, 223 square foot attic, and 303 square foot attached garage; creating a floor area ratio (FAR) of 43% and building site coverage of 38%.

(c) In January 2006, the applicant came forward with a proposal for a Design Approval to allow minor alterations to the property which included the installation of two dormers, a change in roof pitch from flat to sloped over the den, master bedroom, front entryway, and living area as well as the installation of a 35 square foot stairway to allow internal access to the existing attic/storage area. Staff's research of the application discovered that the site plan submitted by the applicant did not match previously approved building permits for the property.

(d) Subsequently, staff determined that, between 1988 and 2006, a series of minor additions had been constructed on the property without the benefit of permits. These additions include a 138 square foot courtyard/den conversion, and a 45 square foot master bedroom addition for a total expansion of 183 square feet. Construction of the additions increased the existing FAR from 43% to 47%, while increasing the existing legal non-conforming building site coverage from 38% to 42% without the issuance of a Variance.

(e) Denial of the Variances would require the applicant to restore the property to its previously permitted state. However, by removing the courtyard/den conversion, the master bedroom addition and proposed internal stairway would be permissible with the issuance of a Coastal Administrative Permit and Design Approval.

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: Preceding findings and supporting evidence.

9. **FINDING:** **APPEALABILITY -** The decision on this project is appealable to the Board of Supervisors and the California Coastal Commission

EVIDENCE: (a) Section 20.86.030 of the Monterey County Zoning Ordinance (Title 20).
(b) The project includes a Coastal Development Permit to allow development on a property with a positive archaeological report; this development is considered conditional and is therefore appealable to the California Coastal Commission in accordance with Section 20.86.080 of the Monterey County Zoning Ordinance (Title 20).