

MONTEREY COUNTY ZONING ADMINISTRATOR

Meeting: June 13, 2013 Time: 1:00 P.M	Agenda Item No.: 4
Project Description: Consider a Variance to the maximum six foot (6') fence height and encroachment into the rear yard setback to allow a ten (10) foot tall chain link fence to be constructed six inches from the rear property line,	
Project Location: 10603 Axtell Street, Castroville, CA 95012	APN: 030-011-013-000 & 030-011-014-000
Planning File Number: PLN130379	Owner: Sea Garden LP Agent: Paul Tran, CHISPA
Planning Area: North County Area Plan/Castroville Community Plan	Flagged and staked: No
Zoning Designation: Castroville Community Plan - High Density Residential	
CEQA Action: Categorically Exempt per Section 15305 (a) – Minor Variance	
Department: RMA - Planning Department	

RECOMMENDATION:

Staff recommends that the Zoning Administrator adopt a resolution (**Exhibit B**) to:

- 1) Find the project Exempt per CEQA Section 15305(a); and
- 2) Approve PLN130379, based on the findings and evidence and subject to the conditions of approval (**Exhibit B**);

PROJECT DISCUSSION:

The applicant's request for a variance to construct a ten foot tall fence six inches from the rear property line emanates from discussions between the applicant, adjoining neighbors and the County related to the neighbor's concerns regarding the security of their property being adjacent to an apartment complex. The apartment complex was approved by the Planning Commission in 2009 (PLN080039). At that time no concern was expressed about the interface between the single family residences to the north and the apartment complex. The apartment complex is currently under construction and as the buildings have been erected the neighbors have concern for their privacy and security.

The applicant, the neighbors and representatives from the County have met on several occasions to determine if there is a solution to the concerns expressed. The agreed upon solution is to construct a 10 foot tall chain link fence six inches from the existing fences constructed as part of the subdivision. Landscaping will be installed in the form of fast growing vines (potato vine) on the fence itself and tall shrubs (*Prunus Caroliniana*) capable of creating a visual barrier between the apartments and the single family residences.

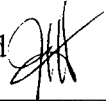
The Zoning Ordinance allows fences up to six feet in height within setback areas. The construction of a 10 foot tall fence would require a variance to exceed this height. Normally variances can only be approved in vary unusual circumstances and not grant a special privilege to the applicant. In this case the unusual circumstance is the interface between the single family residences and the apartments and that the applicant is requesting this variance for the benefit of the neighbors who are requesting that something be done to address their concerns.

OTHER AGENCY INVOLVEMENT: The following agencies and departments reviewed this project:

None

The project was not referred to the Castroville Advisory Committee because their membership is not currently meeting.

Note: The decision on this project is appealable to the Board of Supervisors.

/S/ John Ford 

John Ford, Senior Planner
(831) 755-5158, fordjh@co.monterey.ca.us
(06/06/2013)

cc: Front Counter Copy; Zoning Administrator; Wanda Hickman, Planning Services Manager; John Ford, Project Planner; Sea Garden LP, Owner; Paul Tran, Agent; The Open Monterey Project; LandWatch; Planning File PLN130379

Attachments: Exhibit A Project Data Sheet
 Exhibit B Draft Resolution, including:
 • Conditions of Approval
 • Site Plan.
 Exhibit C Vicinity Map


This report was reviewed by Wanda Hickman. 

EXHIBIT A

Project Information for PLN130379

Project Information:

Project Name: SEA GARDEN LP	
Location: 10603 AXTELL STREET CASTROVILLE	
Permit Type: Variance	
Environmental Status: Exempt	Final Action Deadline (884):
Existing Structures (sf): 31243	Coverage Allowed: 60
Proposed Structures (sf): 0	Coverage Proposed: 41.5
Total Sq. Ft.: 182168	Height Allowed: 35'
Tree Removal: 0	Height Proposed: 24
Water Source: PUBLIC	FAR Allowed: N/A
Water Purveyor: CASTROVILLE COMMUNITY SVCS D	FAR Proposed: N/A
Sewage Disposal (method): SEWER	Lot Size: 4.814
Sewer District:	Grading (cubic yds.): 0

Parcel Information:

Primary APN: 030-011-013-000	Seismic Hazard Zone:
Applicable Plan:	Erosion Hazard Zone:
Advisory Committee:	Fire Hazard Zone:
Zoning:	Flood Hazard Zone:
Land Use Designation:	Archaeological Sensitivity:
Coastal Zone:	Viewshed:
Fire District:	Special Setbacks on Parcel:

Reports on Project Parcel:

Soils Report #:
Biological Report #:
Geologic Report #:
Forest Management Rpt. #:
Archaeological Report #:
Traffic Report #:

**EXHIBIT B
DRAFT RESOLUTION**

**Before the Zoning Administrator in and for the
County of Monterey, State of California**

In the matter of the application of:
SEA GARDEN LP (PLN130379)

RESOLUTION NO. ----

Resolution by the Monterey County Hearing Body:

1. Finding the Exempt per CEQA Section 15305(a); and
2. Approving a Variance to the maximum six foot (6') fence height and encroachment into the rear yard setback to allow a ten (10) foot tall chain link fence to be constructed six inches from the rear property line

[PLN130379, Sea Garden LP, 10603 Axtell Street, Castroville, CA 95012, North County Area Plan/Castroville Community Plan (APN: 030-011-013-000 & 030-011-014-000)]

The Sea Garden LP application (PLN130379) came on for public hearing before the Monterey County Zoning Administrator on June 13, 2013. Having considered all the written and documentary evidence, the administrative record, the staff report, oral testimony, and other evidence presented, the Zoning Administrator finds and decides as follows:

FINDINGS

1. **FINDING:** **PROJECT DESCRIPTION** – The proposed project is a Variance to the maximum six foot (6') fence height and encroachment into the rear yard setback to allow a ten (10) foot tall chain link fence to be constructed six inches from the rear property line.
EVIDENCE: 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 PLN130379.

2. **FINDING:** **CONSISTENCY** – The Project, as conditioned, is consistent with the applicable plans and policies which designate this area as appropriate for development.
EVIDENCE: a) During the course of review of this application, the project has been reviewed for consistency with the text, policies, and regulations in:
 - the 2010 Monterey County General Plan;
 - North County Area Plan;
 - Monterey County Zoning Ordinance (Title 21);
 - Castroville Community Plan

No conflicts were found to exist. No communications were received during the course of review of the project indicating any inconsistencies with the text, policies, and regulations in these documents.

- b) The property is located at 10603 Axtell Street, Castroville, CA 95012 (Assessor's Parcel Number 030-011-013-000 & 030-011-014-000), North County Area Plan/Castroville Community Plan. The parcel is zoned Castroville Community Plan - High Density Residential, which allows the existing apartment complex on the subject property.
- c) The project planner conducted a site May 2, 2013 on May 2, 2013* to verify that the project on the subject parcel conforms to the plans listed above.
- d) The Apartment Complex on the subject site (Sea Garden) was approved by the Planning Commission on January 28, 2009 (PLN080039). The project was an infill development and approved consistent with the Castroville Community Plan. The project was approved in compliance with the setbacks for the zoning district (10'). There are existing single family residences to the north of the subject site and it is desirable to provide some type of screening between the existing residences and the new apartments. This proposal would construct a 10' high black vinyl coated chain link fence six inches from the property line. This chain link fence would be supplemented by landscaping including shrubs and vines to provide a visual screen between the single family residences and the apartment complex.
- e) The project was not referred to the Castroville Citizens Advisory Committee for review because the committee does not have a quorum.
- f) 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 PLN130379.

3. **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. There has been no indication from these departments/agencies that the site is not suitable for the proposed development. Conditions recommended have been incorporated.
 - b) All potential impacts that could potentially be associated with this project have been addressed in as part of PLN080039.
 - c) Staff conducted a site on May 2, 2013 to verify that the site is suitable for this use.
 - d) 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 PLN130379.

4. **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) The project was reviewed by the RMA - Planning Department. The respective agency finds that the project will not have an adverse effect on the health, safety, and welfare of persons either residing or working in the neighborhood.
 - b) The proposed project is a 10' tall chain link fence designed to address concerns by the neighbors related to the proximity of the apartments. The fence is intended to promote the health, safety and well being of adjacent residences.
 - c) Staff conducted a site on May 2, 2013 to verify that the site is suitable for this use.
 - d) 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 PLN130379.

5. **FINDING:** **NO 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. No violations exist on the property.

- EVIDENCE:**
- a) Staff reviewed Monterey County RMA - Planning Department and Building Services Department records and is not aware of any violations existing on subject property.
 - b) Staff conducted a site on May 2, 2013 and researched County records to assess if any violation exists on the subject property.
 - c) There are no known violations on the subject parcel.
 - d) The application, plans and supporting materials submitted by the project applicant to the Monterey County Planning Department for the proposed development are found in Project File PLN130379.

6. **FINDING:** **VARIANCE** – Variances shall only be granted based upon the following Findings:

- 1. That because of special circumstances applicable to the subject property, including the size, shape, topography, location or surroundings, the strict application of development standards in the Monterey County Codes is found to deprive the subject property of privileges enjoyed by other properties in the vicinity under and under identical zoning classification;
- 2. That the variance shall not constitute a grant of privileges inconsistent with the limitations upon other properties in the vicinity and zone in which such property is situated;
- 3. A 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 property has a zoning designation of Castroville Community Plan – High Density Residential.
 - b) The Sea Gardens Project was approved under the design guidelines adopted for the Castroville Community Plan which calls for a mix of

housing types. The subject site has existing single family residences to the north and the residents of those homes desire a security fence between the apartments and their residences. A typical six foot tall wooden fence was not viewed by the residents as sufficient to provide the desired level of security because a six foot high fence can easily be climbed and wooden fences can be broken and pieces removed providing access to the rear of the residences. A ten foot tall chain link fence is more difficult to climb over and is not easily penetrated providing a high level of security consistent with the wishes of the neighbors.

- c) The request for the 10 foot high fence is not a special privilege being requested by the applicant, it is an accommodation to the concerns of the adjacent neighbors who are requesting that something be done to address their concerns. This fence with extended height accomplishes that objective.
- d) The fence is an accessory to the apartment complex which is an allowed use in the High Density Residential zone. This variance would not authorize any use not otherwise permitted in the High Density Zoning District of the Castroville Community Plan.
- e) The project planner conducted a site inspection on May 2, 2013 to verify the circumstances related to the property.
- f) The application, plans and supporting materials submitted by the project applicant to the Monterey County Planning Department for the proposed development are found in Project File PLN130379.

7. **FINDING:** **CEQA (Exempt):** - The project is categorically exempt from environmental review and no unusual circumstances were identified to exist for the proposed project.

- EVIDENCE:**
- a) California Environmental Quality Act (CEQA) Guidelines Section 15305(a) categorically exempts minor variances.
 - b) This is a minor variance to allow at fence within the rear yard setback to exceed a height of 6 feet.
 - c) No adverse environmental effects were identified during staff review of the development application during a site visit on May 2, 2013.
 - d) None of the exceptions under CEQA Guidelines Section 15300.2 apply to this project.
 - e) Staff conducted a site on May 2, 2013 to verify that the site is suitable for this use.
 - f) 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 PLN130379.

8. **FINDING:** **APPEALABILITY** - The decision on this project may be appealed to the Board of Supervisors.

- EVIDENCE:**
- a) Section 21.80 of the Monterey County Zoning Ordinance states that the proposed project is appealable to the Board of Supervisors.

DECISION

NOW, THEREFORE, based on the above findings and evidence, the Zoning Administrator does hereby:

1. Find the project Exempt per CEQA Section 15305(a); and
2. Approve PLN130379, based on the findings and evidence and subject to the conditions of approval (**Exhibit B**);

PASSED AND ADOPTED this 13th day of June, 2013

Jacqueline Onciano, Zoning Administrator

COPY OF THIS DECISION MAILED TO APPLICANT ON DATE

THIS APPLICATION IS APPEALABLE TO THE BOARD OF SUPERVISORS.

IF ANYONE WISHES TO APPEAL THIS DECISION, AN APPEAL FORM MUST BE COMPLETED AND SUBMITTED TO THE CLERK TO THE BOARD ALONG WITH THE APPROPRIATE FILING FEE ON OR BEFORE [DATE]

This decision, if this is the final administrative decision, is subject to judicial review pursuant to California Code of Civil Procedure Sections 1094.5 and 1094.6. Any Petition for Writ of Mandate must be filed with the Court no later than the 90th day following the date on which this decision becomes final.

NOTES

1. You will need a building permit and must comply with the Monterey County Building Ordinance in every respect.

Additionally, the Zoning Ordinance provides that no building permit shall be issued, nor any use conducted, otherwise than in accordance with the conditions and terms of the permit granted or until ten days after the mailing of notice of the granting of the permit by the appropriate authority, or after granting of the permit by the Board of Supervisors in the event of appeal.

Do not start any construction or occupy any building until you have obtained the necessary permits and use clearances from the Monterey County Planning Department and Building Services Department office in Salinas.

2. This permit expires 3 years after the above date of granting thereof unless construction or use is started within this period.

Form Rev. 01-31-2013

Monterey County Planning Department

DRAFT Condition of Approval Implementation Plan/Mitigation Monitoring Reporting Plan

PLN130379

1. PD001 - SPECIFIC USES ONLY

Responsible Department: Planning Department

Condition/Mitigation Monitoring Measure: This Variance (PLN130379 allows a Variance to the maximum six foot (6') fence height and encroachment into the rear yard setback to allow a ten (10) foot tall chain link fence to be constructed six inches from the rear property line. The property is located at 10603 Axtell Street, Castroville, CA 95012 (Assessor's Parcel Number 030-011-013-000 & 030-011-014-000), North County Area Plan/Castroville Community Plan. This permit was approved in accordance with County ordinances and land use regulations subject to the terms and conditions described in the project file. 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 conformance 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)

Compliance or Monitoring Action to be Performed: The Owner/Applicant shall adhere to conditions and uses specified in the permit on an ongoing basis unless otherwise stated.

2. PD002 - NOTICE PERMIT APPROVAL

Responsible Department: Planning Department

Condition/Mitigation Monitoring Measure: The applicant shall record a Permit Approval Notice. This notice shall state:
"A Variance (Resolution Number ***) was approved by the Zoning Administrator for Assessor's Parcel Number 030-011-013-000, 030-011-014-000 on June 13, 2013. The permit was granted subject to 4 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)

Compliance or Monitoring Action to be Performed: Prior to the issuance of grading and building permits or commencement of use, the Owner/Applicant shall provide proof of recordation of this notice to the RMA - Planning Department.

3. PD004 - INDEMNIFICATION AGREEMENT

Responsible Department: Planning Department

Condition/Mitigation Monitoring Measure: The property owner agrees as a condition and in consideration of approval of this discretionary development permit that it will, pursuant to agreement and/or statutory provisions as applicable, including but not limited to Government Code Section 66474.9, defend, indemnify and hold harmless the County of Monterey or its agents, officers and employees from any claim, action or proceeding against the County or its agents, officers or employees to attack, set aside, void or annul this approval, which action is brought within the time period provided for under law, including but not limited to, Government Code Section 66499.37, as applicable. The property owner will reimburse the County for any court costs and attorney's fees which the County may be required by a court to pay as a result of such action. The County may, at its sole discretion, participate in the defense of such action; but such participation shall not relieve applicant of his/her/its obligations under this condition. An agreement to this effect shall be recorded upon demand of County Counsel or concurrent with the issuance of building permits, use of property, filing of the final map, recordation of the certificates of compliance whichever occurs first and as applicable. The County shall promptly notify the property owner of any such claim, action or proceeding and the County shall cooperate fully in the defense thereof. If the County fails to promptly notify the property owner of any such claim, action or proceeding or fails to cooperate fully in the defense thereof, the property owner shall not thereafter be responsible to defend, indemnify or hold the County harmless.
(RMA - Planning Department)

Compliance or Monitoring Action to be Performed: Upon demand of County Counsel or concurrent with the issuance of building permits, use of the property, recording of the final/parcel map, whichever occurs first and as applicable, the Owner/Applicant shall submit a signed and notarized Indemnification Agreement to the Director of RMA-Planning Department for review and signature by the County.

Proof of recordation of the Indemnification Agreement, as outlined, shall be submitted to the RMA-Planning Department.

4. PSPD - 001 Landscaping

Responsible Department: Planning Department

Condition/Mitigation Monitoring Measure: The applicant shall install landscaping along the 10 foot tall chain link fence as follows:

1. Vines (potato vine or equivalent) shall be planted along the base of the chainlink fence such that the vines shall be capable of covering the fence.
2. Shrubs (Prunus Caroliniana or equivalent) shall be placed along the fence line with such a spacing that the shrubs can grow to maintain a solid hedge with a minimum height of 20 feet.

Compliance or Monitoring Action to be Performed: The applicant shall prepare a landscape plan and submit it to the RMA Planning Department for review and approval and the approved landscape plan shall be implemented prior to issuance of an occupancy permit for the Sea Garden apartment complex (PLN080039).

