

**PLANNING COMMISSION
COUNTY OF MONTEREY, STATE OF CALIFORNIA**

RESOLUTION NO. 03083

A.P. # 015-141-017-000

**FINDINGS AND
DECISION**

In the matter of the application of
Douglas De George (PLN020411)

for a Use Permit in accordance with Title 21 (Zoning) Chapter 21.74 (Use Permits) of the Monterey County Code, to allow a Use Permit for a waiver of the policy prohibiting development on slopes greater than 30 percent and Design Approval. The development consists of: 1) Legalization of 4 "as-built" cement block retaining walls (3-6 feet in height), averaging 75 feet in length; grading (22 cubic yards); and completion of a partially constructed 6-foot tall brick wall; and 2) Construction of 5 new cement block retaining walls (3-6 feet in height), averaging 31 feet in length; a river rock bed for drainage with a small pond for collection of rainwater; and landscape lighting, located at 25935 South Carmel Hills Drive, Carmel, Greater Monterey Peninsula Area, came on regularly for hearing before the Planning Commission on December 10, 2003.

Said Planning Commission, having considered the application and the evidence presented relating thereto,

FINDINGS OF FACT

Part I: FINDINGS AND EVIDENCE FOR PARTIAL APPROVAL OF THE USE PERMIT AND DESIGN APPROVAL TO LEGALIZE THE 4 "AS-BUILT" CEMENT BLOCK RETAINING WALLS AND COMPLETE CONSTRUCTION OF THE 6-FOOT TALL BRICK WALL:

1. FINDING: CONSISTENCY AND SITE SUITABILITY – The DeGeorge Use Permit and Design Approval (PLN020411), as described in Condition No. 1 and as conditioned, are consistent with the plans, policies, requirements and standards of the Monterey County General Plan, Greater Monterey Peninsula Area Plan, and the Monterey County Zoning Ordinance (Title 21). The property is located at 25935 South Carmel Hills Drive in the Carmel area (Assessor's Parcel Number 015-141-017-000). The parcel is zoned "MDR/1-D" or Medium Density Residential, 1 acre per unit, Design Control District. The site is physically suitable for the 4 "as-built" retaining walls and the 6-foot tall brick wall.

EVIDENCE: (a) Staff reviewed the application and plans submitted for the Use Permit and Design Approval application, in project file PLN020411 at the Monterey County Planning and Building Inspection Department, to determine the project's consistency with the documents listed in finding no. 1 above.

(b) A staff archeologist field check on October 16, 2002, verified that there is no surface evidence of potentially significant archeological resources on the site.

(c) The project planner conducted a site visit on October 16, 2002, to verify that the proposed project complies with policies in the Greater Monterey Peninsula Area Plan. The project, as conditioned, will not create an adverse visual impact when viewed from a common public viewing area, including the Hatton Canyon trail.

(d) The Greater Monterey Peninsula Land Use Advisory Committee reviewed the proposal and recommended approval (2 – 1 vote) August 6, 2003, subject to a requirement for landscaping to minimize visual impacts from the Hatton Canyon trail. This recommendation is included as a condition of approval.

(e) Based on the documentation contained in Part I of the findings and evidence, the applicant's request for a waiver of the policy prohibiting development on slopes greater than 30 percent, and the administrative record, staff has determined that the "as built" retaining walls and grading which occurred are consistent with **Policy 26.1.10.B** of the Monterey County General Plan since the development better achieves the resource protection objectives and policies contained in the General Plan and Greater Monterey Peninsula Area Plan. Removal of the retaining walls and restoration of the site would be unfeasible and would endanger the public health or safety due to an unstable soil condition and uncontrolled drainage.

(f) The project and site have been reviewed by the Monterey County Planning and Building Inspection Department, Cypress Fire Protection District, Monterey County Water Resources Agency, Monterey County Public Works Department, Monterey County Parks Department, and Monterey County Environmental Health Division. There has been no indication from these agencies that the site is not suitable. There are no physical or environmental constraints such as geological or seismic hazard areas, environmentally sensitive habitats, or similar areas that would indicate the site is not suitable for the 4 "as-built" retaining walls and the 6-foot tall brick wall.

2. FINDING: 30 PERCENT SLOPE WAIVER – The proposed development, as described in Condition No. 1 and as conditioned, better achieves the goals, policies and objectives of the Monterey County General Plan and Greater Monterey Peninsula Area Plan than other development alternatives.

EVIDENCE: (a) The project proposes to legalize "as built" retaining walls and grading on slopes ranging from 30 to 60 percent. A retaining wall and grading evaluation prepared for this site by Grice Engineering and Geology, Inc., (July 8, 2002) concludes that the site has been developed with the minimum quantity of soil disturbance (22 cubic yards) and the sloped soils are retained with dry set landscaping block. Further, the area with the sloped retained earth is stable and will remain stable in the absence of severe erosion and/or unengineered site development. According to the evaluation, a landscaping planting plan should be provided to reduce surface soil exposure and provide retardation for over surface storm and landscape water flow. Landscaping is required as a condition of permit approval.

(b) Staff required a subsequent evaluation of the retaining walls by a qualified engineering firm to determine if removal of the retaining walls and restoration of the site is feasible or would result in a hazardous condition with greater impacts to the slopes. In response, documentation was submitted by Grice Engineering and Geology, Inc., (October 16, 2003) concluding that the existing walls should remain in place. The evaluation states that the walls are stable and help to control erosion and drainage and that the soil is retained in a completely satisfactory manner. According to the report, removal of these walls would result in an unstable soils condition and uncontrolled drainage.

(c) A memo from the County's Chief Building Official (November 20, 2003) corroborates the conclusion in the evaluation prepared by Grice Engineering, that removal of the walls and restoration of the site would be unfeasible and "would cause a high potential for ground failure, with added erosion problems."

(d) Based on the above documentation, the applicant's request for a waiver of the policy prohibiting development on slopes greater than 30 percent, and the administrative record, staff has determined that the "as built" retaining walls and grading which occurred are consistent with **Policy 26.1.10.B** of the Monterey County General Plan since the development better achieves the resource protection objectives and policies contained in the General Plan and Greater Monterey Peninsula Area Plan. Removal of the retaining walls and restoration of the site would be unfeasible and would endanger the public health or safety due to an unstable soil condition

and uncontrolled drainage.

- (e) The application and plans submitted for the Use Permit and Design Approval, including the applicant's request for a 30 percent slope waiver, in project file PLN020411 at the Monterey County Planning and Building Inspection Department.
- (f) Analysis prepared by staff to determine if an Initial Study is required for the 4 "as built" retaining walls contained in file PLN020411.

3. FINDING: VISUAL SENSITIVITY – The proposed development, as described in Condition No. 1 and as conditioned, will not create a substantially adverse visual impact when viewed from a common public viewing area.

EVIDENCE: (a) The project site abuts Hatton Canyon, an area of open space visited by the public and designated as visually sensitive according to Planning and Building Inspection Department resource maps. Based on staff's site visit and photo-documentation, the "as built" retaining walls do not cause a significant adverse visual impact. This is a residential area that, when viewed from Hatton Canyon, is already visually-degraded since numerous other structures, such as single family residences, are visible from Hatton Canyon. The project site is not visible from any other common public viewing area.

(b) The project was reviewed by the Greater Monterey Peninsula Land Use Advisory Committee (LUAC) on August 6, 2003. The LUAC recommended approval (vote 2 – 1) of the proposed project with a recommendation for additional landscaping. As a condition of approval, the "as built" retaining walls would be screened with native species (including fire resistant and erosion control landscaping) to soften their appearance from Hatton Canyon and blend with the natural environment. Landscaping will also further stabilize the site by preventing erosion and controlling runoff.

(c) Staff's site visit, materials in the file and photo-documentation of the existing retaining walls when viewed from the Hatton Canyon trail.

(d) Analysis prepared by staff to determine if an Initial Study is required in file PLN020411.

4. FINDING: CEQA (Exempt) – The proposed development, as described in Condition No. 1 and as conditioned, will not have a significant environmental impact.

EVIDENCE: (a) Sections 15301(l)(4) and 15061(b)(3) of the CEQA Guidelines exempt the "as built" retaining walls and grading from environmental review. No adverse environmental impacts were identified during staff review of the project application.

(b) The applicant is required to comply with Title 16 (Environment) of the Monterey County Code in terms of grading and erosion control requirements.

(c) Findings and supporting evidence for approval of a portion of the application set forth in Part I.

(d) Analysis prepared by staff to determine if an Initial Study is required in file PLN020411.

5. FINDING: ZONING COMPLIANCE – Approval of the Use Permit and Design Approval, as described in Condition no. 1 and as conditioned, would ensure that the subject property is in compliance with all rules and regulations pertaining to zoning uses, subdivision, and other applicable provisions of Title 21. Zoning violation abatement costs have been paid.

EVIDENCE: Sections 21.12.020, 21.44.020 and 21.64.230 of the Monterey County Zoning Ordinance. Staff verification of the Monterey County Planning and Building Inspection Department records indicates that 2 violations exist on the subject property. These entail: 1) Construction of 4 “as-built” cement block retaining walls (3-6 feet in height), averaging 75 feet in length; grading (22 cubic yards) on slopes exceeding 30% without a Use Permit, Design Approval, Building Permit and Grading Permit; 2) Partial construction of 6-foot tall brick wall in a relatively flat area adjacent to the existing residence without Design Approval and a Building Permit.

6. **FINDING: HEALTH AND SAFETY** – The establishment, maintenance, and operation of the proposed use or structure applied for will not, under the circumstances of the particular case, be detrimental to the health, safety, peace, morals, comfort, and general welfare of persons residing or working in the neighborhood or to the general welfare of the County.

EVIDENCE: Preceding findings and supporting evidence.

7. **FINDING: APPEALABILITY** – The decision on this project is appealable to the Board of Supervisors.

EVIDENCE: Section 21.80.040.D of the Monterey County Zoning Ordinance (Title 21).

Part II: FINDINGS AND EVIDENCE FOR PARTIAL DENIAL OF THE DEGEORGE USE PERMIT AND DESIGN APPROVAL TO CONSTRUCT 5 NEW CEMENT BLOCK RETAINING WALLS (3-6 FEET IN HEIGHT), AVERAGING 31 FEET IN LENGTH, A RIVER ROCK BED FOR DRAINAGE WITH A SMALL POND FOR COLLECTION OF RAINWATER AND LANDSCAPE LIGHTING:

1. **FINDING: INCONSISTENCY AND SITE INSUITABILITY** – The DeGeorge Use Permit and Design Approval (PLN020411), as described above, are not consistent with the plans, policies, requirements and standards of the Monterey County General Plan, Greater Monterey Peninsula Area Plan, and the Monterey County Zoning Ordinance (Title 21). The site is not physically suitable for the 5 new cement block retaining walls, river rock bed and pond.

EVIDENCE: (a) This portion of the proposed development is not consistent with **Policy 7.2.1** of the Monterey County General Plan, which states that landowners shall be encouraged to preserve the integrity of existing terrain and natural vegetation in visually sensitive areas such as hillsides and ridges. In addition, **Policy 26.1.9.1 (GMP)** of the Greater Monterey Peninsula Area Plan, states that development on canyon edges and hilltops shall be designed to minimize the visual impact of the development. The new development is inconsistent with the above mentioned policies because it would: 1) further degrade the integrity of the existing terrain and natural vegetation; and 2) further degrade the viewshed from Hatton Canyon.

(b) Staff’s site visit and analysis.

(c) See also other findings and supporting evidence in Part II for denial of this portion of the Use Permit.

(d) Application, plans and supporting materials in file PLN020411.

2. **FINDING: 30 PERCENT SLOPE PROHIBITION** – This application proposes the construction of 5 new cement block retaining walls (3-6 feet in height) that average 31 feet in length and a river rock bed with a small pond for collection of rainwater on slopes exceeding 30%. This development is not consistent with **Policy 26.1.10.A and B** of the Monterey County General Plan, which states that an exemption to allow development on slopes exceeding 30 percent may be granted if one or both of the following findings are made, based upon substantial evidence:

a) there is no alternative which would allow development to occur on slopes of less than 30%; or, b) the proposed development better achieves the resource protection objectives and policies contained in the Monterey County General Plan and Greater Monterey Peninsula Area Plan. This finding cannot be supported by the following evidence.

EVIDENCE: (a) The applicant proposes to construct 5 additional cement block retaining walls and a river rock bed for drainage, which would also be located on slopes ranging from 30 to 60 percent. The Owner's request for a 30 percent slope waiver request states that the retaining walls on the steep slopes would: 1) improve the safety and well being of the existing residence from the threat of fire coming from Hatton Canyon; 2) provide for a safer environment for children playing in the backyard; 3) provide protection from aggressive wood rats; and 4) reduce erosion.

(b) Staff has determined that there are more appropriate and less invasive measures that can be implemented which are effective alternatives to the proposed development of additional retaining walls on steep slopes. These alternatives would also better achieve the resource protection objectives and policies contained in the Monterey County General Plan and the Greater Monterey Peninsula Area Plan. Examples of more appropriate and less invasive measures, as opposed to the additional retaining walls include, but are not limited to: 1) planting fire resistant and erosion control landscaping in place of the walls on slopes exceeding 30 percent; 2) constructing walls closer to the house where the slopes are less than 30 percent; and 3) placing chicken wire at the base of the property which abuts Hatton Canyon in order to keep out wood rats and minimize potential visual impacts.

(c) The evaluations prepared by Grice Engineering and Geology, Inc., (July 8, 2002 and October 16, 2003) for the project do not describe the necessity for additional retaining walls and a river rock bed in order to control erosion and drainage. The evaluation, dated July 8, 2002, does recommend that a landscaping plan be implemented to reduce surface soil exposure and provide retardation for over surface storm and landscape water flow, which is also recommended by staff.

(d) The memo from the County's Chief Building Official (November 20, 2003) does not mention the necessity for additional retaining walls and a river rock bed in order to prevent ground failure and control erosion and runoff.

3. FINDING: VISUAL SENSITIVITY – The proposed development, as described in Condition No. 1 and as conditioned, will create a substantially adverse visual impact when viewed from a common public viewing area.

EVIDENCE: The applicant also proposes landscape lighting similar to street light fixtures which is not in keeping with **Policy 26.1.20** of the Monterey County General Plan. This policy states that exterior lighting shall be unobtrusive and constructed or located so that only the intended area is illuminated, long range visibility is reduced, and offsite glare is fully controlled. The proposed landscape lighting is inconsistent with this policy since it would create offsite glare that would be visible from Hatton Canyon as well as from other residential properties. Permit conditions prohibit lighting of the retaining walls. In addition, removal of the existing street light fixtures located at the rear of the property is required.

- 4. FINDING: CEQA (Exempt)** – That portion of the project described above and denied by the Planning Commission is exempt from environmental review.
- EVIDENCE:** Environmental review is not required for a project that is denied pursuant to CEQA Guidelines Section 15270. If the Planning Commission chooses to approve the 5 new retaining walls, environmental review will be required.
- 5. FINDING: HEALTH AND SAFETY** – The establishment, maintenance, and operation of the proposed retaining walls and development on slopes averaging 30 to 60 percent will, under the circumstances of the particular case, be detrimental to the health, safety, peace, morals, comfort, and general welfare of persons residing or working in the neighborhood or to the general welfare of the County.
- EVIDENCE:** Preceding findings and supporting evidence.

DECISION

THEREFORE, it is the decision of said Planning Commission that said application be approved in part and denied in part as shown on the attached sketch, subject to the following conditions:

1. The DeGeorge Use Permit and Design Approval (PLN020411) allow for a waiver of the policy prohibiting development on slopes greater than 30 percent. The development consists of legalizing 4 “as-built” cement block retaining walls (3-6 feet in height), averaging 75 feet in length; grading (22 cubic yards); and completion of a 6-foot tall brick wall. The property is located at 25935 South Carmel Hills Drive, Carmel (Assessor's Parcel Number 015-141-017-000), Greater Monterey Peninsula area. 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 Planning and Building Inspection. 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 these conditions is allowed unless additional permits are approved by the appropriate authorities. **(Planning and Building Inspection)**
2. The height of the brick wall shall be no higher than the adjacent property owner's fence and shall be finished on both sides with brick. **(Planning and Building Inspection)**
3. All required grading and building permits for the “as built” retaining wall and the partially constructed brick wall shall be obtained. **(Planning and Building Inspection)**

Prior to the Issuance of Building or Grading Permits:

4. The applicant shall record a notice which states: "A permit (Resolution No. 03083) was approved by the Planning Commission for Assessor's Parcel Number 015-141-017-000 on December 10, 2003. The permit was granted subject to 13 conditions of approval, which run with the land. A copy of the permit is on file with the Monterey County Planning and Building Inspection Department." Proof of recordation of this notice shall be furnished to the Director of Planning and Building Inspection prior to issuance of building permits or commencement of the use. **(Planning and Building Inspection)**
5. Prior to the issuance of a building or grading permit, a revised site plan prepared by a licensed surveyor or civil engineer shall be submitted that provides the locations of the “as built” retaining walls and the 6-foot tall brick wall, but removes the proposals for new retaining walls, a river rock bed with a small pond for collection of rainwater and landscape lighting. The site plan shall include all property lines and any recorded covenants,

easements, etc. Said plan shall be subject to approval by the Director of Planning and Building Inspection. Any portion of the “as built” retaining walls encroaching on a covenant line or property line shall either be removed by the owner, or, the owner shall submit a notarized signed agreement between the affected property owners to allow the “as built” retaining walls’ encroachment. **(Planning and Building Inspection)**

6. A scenic easement shall be granted to the County of Monterey over portions of the property with slopes over 30 percent except the area approved for development under this permit. The scenic easement deed restriction and map shall be subject to the approval of the Planning and Building Inspection Department prior to issuance of a building or grading permit and recorded prior to final inspection. **(Planning and Building Inspection)**
7. Prior to the issuance of a building or grading permit, three copies of a landscaping plan shall be submitted to the Director of Planning and Building Inspection for approval. 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 incorporate native trees and other native vegetation to screen the retaining walls from Hatton Canyon trail. The goal of the screening shall be to soften the walls’ appearance from Hatton Canyon and better blend the structures with the environment. The landscaping plan shall also include fire resistant and erosion control landscaping (as described in the County’s brochures on “Fire Resistant Landscaping” and “Erosion Control Planting”) in order to further stabilize the site by preventing erosion and controlling runoff and to further protect the single family residence from the threat of fire.* The landscaping plan shall be in sufficient detail to identify the location, specie, and size of the proposed landscaping materials. All landscaped areas and/or fences shall be continuously maintained by the property owner and all plant material shall be continuously maintained in a litter-free, weed-free, healthy, growing condition. **(Planning and Building Inspection)**

Prior to Final Building Inspection:

8. The applicant shall remove the existing street light fixtures located at the rear of the property. **(Planning and Building Inspection)**
9. The landscaping shall be installed prior to final building inspection and shall be subject to the approval of the Director of Planning and Building Inspection. **(Planning and Building Inspection)**
10. The applicant shall cause to be removed from the property all junk, including scrap metals, scrap materials, or machinery, garbage, debris or similar materials. **(Planning and Building Inspection)**
11. The applicant shall provide evidence showing the brick wall is in compliance with Condition No. 2. **(Planning and Building Inspection)**

Continuous Permit Conditions:

12. If cultural, archeological, historical or paleontological resources are uncovered at the site (surface or subsurface resources) work shall be halted immediately within 50 meters (165 feet) of the find until it can be evaluated by a qualified professional archeologist. The Monterey County Planning and Building Inspection Department and a qualified archeologist (i.e., an archeologist registered with the Society of Professional Archeologists) shall be immediately contacted by the responsible individual present on-site. When contacted, the project planner and the archeologist shall immediately visit the site to determine the extent of the resources and to develop proper mitigation measures required for the discovery. **(Planning and Building Inspection)**
13. Exterior lighting for the retaining walls shall be prohibited. **(Planning and Building Inspection)**

PASSED AND ADOPTED this 10th day of December 2003, by the following vote:

AYES: Errea, Hawkins, Padilla, Brennan, Sanchez, Diehl, Salazar, Rochester, Wilmot
NOES: None
ABSENT: Parsons

Original Signed By:

JEFF MAIN, SECRETARY

Copy of this decision mailed to applicant on

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

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 and Building Inspection Department office in Marina.

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