

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

RESOLUTION NO. 04040

A.P.# 259-092-057-000-M

In the matter of the application of
CWN (PLN040477)

FINDINGS & DECISION

for consideration of an Appeal (PLN040477 – Canada Woods North, LLC) of an Administrative Interpretation by the Director to require either a Map Amendment or a Minor Subdivision for an application (PLN040068) to adjust three undeveloped lots totaling 28.14 acres, located at Via Paraiso Rd at Via Malpaso, came on regularly for hearing before the Planning Commission on September 8, 2004.

Said Planning Commission, having considered the application and the evidence presented relating thereto, now makes the following findings and decision:

FINDINGS OF FACT

- 1. FINDING:** An appeal (PLN040477 – Canada Woods North, LLC) of an administrative interpretation by the Director on July 27, 2004, to require either a Map Amendment or a Minor Subdivision, not a Lot Line Adjustment as requested by the applicant, for an application (PLN040068) to adjust three undeveloped lots totaling 28.14 acres including: 1) decreasing Lot 71 from 10.13 acres to 10.00 acres, abandoning an established building envelope, adjusting a second building envelope, and amending a scenic easement (assessors parcel number 259-092-057); 2) increasing Lot 72 from 10.01 acres to 10.14 acres creating a new road and utility easement, and amending a scenic easement (assessors parcel number 259-092-058); and 3) adjust property line location with no net increase/decrease of property size, adjustment of the building envelope, and amending a scenic easement (assessors parcel number 259-092-059) was filed by Derinda L. Messenger. The appeal was timely filed on July 29, 2004.

- EVIDENCE:** (a) Said appeal has been filed with the Secretary of the Planning Commission within the time prescribed by Monterey County pursuant to Zoning Ordinance Chapter 21.82;
- (b) Said appeal has been determined to be complete;
- (c) The Planning Commission has reviewed, evaluated, and considered the appeal and responds as follows:

Contention Number 1

Appellant alleges that the proposed application is adjusting the boundaries of three existing separate lots and the final configuration does not result in a greater number of lots; therefore, qualifying as a Lot Line Adjustment.

Commission Finding:

This portion of the appeal is denied. The application as a whole involves much more than just adjusting property lines and includes proposed changes, which may impact sensitive habitat. A Lot Line Adjustment is not the appropriate mechanism to use in adjusting easements, property lines, building envelopes, and access routes when said changes have the potential to negatively impact a sensitive habitat.

Contention Number 2

Appellant alleges that the proposed lot line adjustment simply includes relocation of easements and therefore qualifies as a Lot Line Adjustment.

Commission Finding:

This portion of the appeal is denied. The adjustments requested will encroach into sensitive habitat. The habitat was identified in an Environmental Impact Report (EIR) prepared for the Canada Woods North subdivision, dated November 1, 1996, and approved by the Monterey County Board of Supervisors on December 17, 1996, upon recommendations by the Greater Monterey Peninsula Land Use Advisory Committee, Planning Commission, Subdivision Committee, and public comment.

The Board has taken the time to evaluate the existing map in relation to building envelopes, easements, and access routes and made a determination of approval based on the review process and public hearings. To allow changes to these areas under a ministerial act such as a Lot Line Adjustment would in effect circumvent the decision makers and deny the public an opportunity to comment on potential impacts to existing scenic easements and sensitive habitat.

Contention Number 3

The appellant alleges that the County Code and Map Act states that the County's review of a Lot Line Adjustment is limited to "determination of whether or not the parcels resulting from the lot line adjustment will conform to the local General Plan, any applicable Coastal Plan and Zoning and Building Ordinances" and that "no tentative map, parcel map, or final map shall be required as a condition of approval of the lot line adjustment.

Commission Finding:

This portion of the appeal is denied. The applicant's contention would be a true statement if a Lot Line Adjustment is processed; however, this Commission has determined that a Lot Line Adjustment is not an appropriate mechanism to process adjustments to an approved map that may impact sensitive habitat.

Contention 4

The appellant alleges a subdivision is defined as "the division, by any subdivider, of any unit or units of improved or unimproved land . . . (Government Code §66424). The proposed application does not contain a division of land and is therefore a Lot Line Adjustment.

Commission Finding:

This portion of the appeal is denied. Determining that the proposed request is not a subdivision does not automatically mean that the request is a Lot Line Adjustment. Based on precedence created with adoption of application PLN030064/Canada Woods North, the proposed application meets the test established to determine when a project constitutes a Map Amendment as opposed to a Lot Line Adjustment.

DECISION

THEREFORE, it is the decision of said Planning Commission that said appeal be denied and affirm the opinion rendered by the Department of Planning and Building Inspection based on the Findings and Evidence.

PASSED AND ADOPTED this 8th day of September 2004, by the following vote:

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

JEFF MAIN, Secretary

COPY OF THIS DECISION WAS MAILED TO THE APPLICANT ON

IF ANYONE WISHES TO APPEAL THIS DECISION, AN APPEAL FORM MUST BE COMPLETED AND SUBMITTED TO THE SECRETARY TO 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.