

RESOLUTION NO. 020158

A.P.# 259-101-102-000

In the matter of the application of

Russell & Marce Weiss TRS (PLN020158)

FINDINGS & DECISION

for a Variance to Section 21.42.030F, in accordance with Title 21 (Zoning) Chapter 21.72 (Variances) of the Monterey County Code, for additional height to allow construction of a single family dwelling exceeding the 30' height limitation by 3"; located at 24316 Monterra Woods Road, Monterey, Greater Monterey Peninsula area, came on regularly for hearing before the Zoning Administrator on August 8, 2002.

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

FINDINGS FOR APPROVAL OF A 3" VARIANCE

1. **FINDING:** That because of special circumstances applicable to the subject site and structure including size, terrain of lot, location of surroundings, roof pitch, structural requirements, and tolerances, factors not usually associated with this type of construction, the strict application of this Title is found to deprive the subject property of privileges enjoyed by other properties in the vicinity and under identical zone classification.

 EVIDENCE: Circumstances involving measurement from average natural grade, pitch of the roof, requirement for structural steel resulted in a builder's error of 3" in a 30' height limitation resulting in a 3" exceedance of the height limitation. The **strict** interpretation of this ordinance requirement resulted in a red-tag stop work order that has prevented the completion of the dwelling as others have been completed in the immediate vicinity.

2. **FINDING:** That the variance 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;

 EVIDENCE: Examination of the requested variance shows that it is a miniscule deviation that may be interpreted by a rational person as essentially complying with the 30-foot height limitation of the zoning district. Allowing this miniscule exceedance when faced with exorbitant costs for a meaningless reduction lacks perspective and would constitute an exceedingly strict interpretation of the ordinance requirement, not in accord with other interpretations in the building record already enjoyed by other dwellings in the Highway 68 corridor.

3. **FINDING:** 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: The requested variance is for a miniscule exceedance of height. It is to allow the completion of a home located in an RDR/B-6-UR-D-S (Rural Density Residential, Site restricted to lot size as shown on a Final Subdivision Map, Urban Reserve, with Design and Site Review District. The Use and activity anticipated from the proposed and constructed single-family dwelling are in conformance with the limitations on activities and uses allowed in the district.

4. FINDING: The establishment, maintenance, or operation of the 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 of such proposed use, or be detrimental or injurious to property and improvement in the neighborhood, or to the general welfare of the County.

EVIDENCE: At issuance of the red-tag "STOP WORK!" sufficient construction was completed to allow the following observations:

- a. The exceedance of structure height is not noticeable to passing motorists or neighboring properties.
- b. The improvements and property are not visible from any public viewing area including Highway 68 or Olmsted Road in the nearby vicinity.
- c. The home conforms to the uses of other parcels in the Rural Density Residentially zoned neighborhood.
- d. There is no expectation that the nature or completion of the construction with a 3" exceedance of height in a small portion of the structure's roof ridgeline will have any negative impact on the neighborhood, or general welfare of the County.
- e. This action is an interpretation of the strict application of the Zoning Ordinance to wit Title 21. Section 21.60.060C(1b) "Maximum [Main Structural] Height: 30 feet", and does not alter, amend or set a new precedent for the standards contained in that section of the Title.

DECISION

THEREFORE, it is the decision of said Zoning Administrator that said application for Variance be granted.

PASSED AND ADOPTED this 8th day of July, 2002.

Original Signed By:

LYNNE MOUNDAY
ZONING ADMINISTRATOR

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 PLANNING COMMISSION 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 Salinas.

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