

MIKE NOVO
ZONING ADMINISTRATOR

STATE OF CALIFORNIA
COUNTY OF MONTEREY

RESOLUTION NO. 030102

A.P.# 243-161-017-000

In the matter of the application of
Dean & Rebekah Witter (PLN030102)

FINDINGS & DECISION

for a Variance in accordance with Title 20 (Zoning) Chapter 20.78 (Variances) of the Monterey County Code, to allow for a variance from side yard setbacks to allow development of a single family dwelling (2,232 sq. ft.) with an attached garage (440 sq. ft.); and Design Approval on a lot not certified by the California Coastal Commission. The property is located at 112A Yankee Point Drive, Carmel, Yankee Point area, Coastal Zone, came on regularly for hearing before the Zoning Administrator on January 29, 2004.

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

FINDINGS OF FACT

1. **FINDING: CONSISTENCY** – The project is consistent with the requirements of Chapter 20.44 (Design Control Districts) of the zoning ordinance (Title 20). The parcel is designated as “LDR/1-D (20’) (CZ)” (*Low Density Residential, 1 acre per unit, Design Control District, 20 foot height limit, Coastal Zone*).

EVIDENCE: (a) Planning and Building Inspection Department (PBID) staff have reviewed the project as contained in the application and accompanying materials for conformity with Chapter 20.44 of the Monterey County Zoning Ordinance (Title 20) and have determined that the project is consistent. Permit application, plans, and materials contained in Project File No. PLN030102.
(b) The project planner conducted onsite inspections in April 8, 2003, to verify that the project on the subject parcel conforms to the chapter mentioned above.
(c) The requested Variance from the side yard setback requirement and the Design Approval request are for future residential development of the subject parcel. Residential development is permitted for the subject lot pursuant to Chapters 20.14 (LDR [CZ] Districts) and 20.76 (Coastal Administrative Permits) of Title 20.
(d) The parcel is zoned Low Density Residential, 1 acre per unit, Design Control District, 20 foot height limit, Coastal Zone (“LDR/1-D [20’] [CZ]”).
(e) The Carmel Area Land Use Advisory Committee recommended denial of the project by a vote of 5 to 0. LUAC meeting minutes dated October 20, 2003.
(f) The application, plans, and support materials submitted by the project applicant to the Monterey County Planning and Building Inspection Department for the proposed development, found in Project File No. PLN030102.

2. **FINDING: SITE SUITABILITY** – Site suitability will be determined by the California Coastal Commission (CCC) as part of its Coastal Development Permit application process since the

subject parcel has not been certified by the CCC and therefore is not included in the Monterey County Local Coastal Program.

EVIDENCE: (a) The Carmel Area Land Use Plan indicates that the subject parcel (APN 243-161-017-000) has not been certified by the CCC.

- 3. FINDING: VARIANCE, SPECIAL CIRCUMSTANCES** – The strict application of the setback requirements for the LDR zoning district (Section 20.14.060.C.1.a of Title 20) are not found to deprive the subject property of privileges enjoyed by other property owners in the vicinity under an identical zoning classification, because there are no special circumstances applicable to the subject property, including the size, shape, topography, location of the lot, or the surrounding area.

EVIDENCE: (a) The record indicates that the subject lot can accommodate a single-family dwelling without the need for a Variance from the setback requirements, especially one that is of the size of the house currently proposed. Therefore, no special circumstances applicable to the subject property, including the size, shape, topography, location of the lot, or the surrounding area are found to be apparent.

(b) The application, plans, and support materials submitted by the project applicant to the Monterey County Planning and Building Inspection Department for the proposed development, found in Project File No. PLN030102.

(c) Zoning Administrator Field Trip dated January 15, 2004.

(d) Testimony at Zoning Administrator public hearings on January 8 and 29, 2004. Testimony includes the fact that, even if a private viewshed easement exists on the property, the property owner has the opportunity to build a much larger house than that proposed under application PLN030102 between the front yard setback, side yard setback, and private view easement. The ground area is approximately 2,500 to 3,000 square feet. The zoning district allows a two-story residence to be constructed.

(e) Section 20.14.060.C, which demonstrates that the property is subject to a 20-foot height limit, which is sufficient to construct a two-story residence.

- 4. FINDING: VARIANCE, SPECIAL PRIVILEGE** – A Variance from the side yard setback requirement in this case would constitute a grant of privileges inconsistent with the limitations upon other property owners in the vicinity and zone in which such property is situated.

EVIDENCE: (a) Zoning Administrator Field Trip dated January 15, 2004. Observations during the field trip demonstrated that other houses enjoy side yard setbacks that are less than the required 20 feet.

(b) Section 20.02.020, Sheet 22 of the Monterey County Coastal Implementation Plan (Part 1), which shows that the residentially developed parcels in this neighborhood are similarly zoned Low Density Residential.

(c) Side yard variances granted for several properties on Yankee Point Drive: Monterey County file numbers ZA94017, PC965350, and PC06825. All of these properties are zoned Low Density Residential.

(d) The application, plans, and support materials submitted by the project applicant to the Monterey County Planning and Building Inspection Department for the proposed development, found in project file number PLN030102.

- 5. FINDING: VARIANCE, AUTHORIZED USE** – The proposed future use, which is residential in nature, is expressly authorized by the zone regulation governing the parcel of property.

EVIDENCE: (a) The subject parcel is zoned for residential uses (LDR/1-D [CZ]; i.e., Low Density Residential, 1 unit per acre, Design Control District, Coastal Zone).

- 6. FINDING: CEQA** – The proposed project is subject to environmental review by the California Coastal Commission as part of their Coastal Development Permit application process since the subject parcel has not been certified by the CCC and therefore is not included in the Monterey County Local Coastal Program.

EVIDENCE: (a) The Carmel Area Land Use Plan indicates that the subject parcel (APN 243-161-017-000) has not been certified by the CCC.

- 7. 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, and all zoning violation abatement cost, if any, have been paid.

EVIDENCE: (a) Staff reviewed Monterey County Planning and Building Inspection Department records and is not aware of any violations that exist on subject property.

(b) The Carmel Area Land Use Plan indicates that the subject parcel (APN 243-161-017-000) has not been certified by the CCC. Therefore, the impacts to the archaeological site on the subject parcel fall under jurisdiction of the California Coastal Commission.

- 8. 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 section 20.70.050.B.4 of Title 20).

EVIDENCE: (a) Public coastal access is available through the subject property.

(b) Staff site visit on April 8 and November 19, 2003.

- 9. 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) Preceding findings and supporting evidence.

- 10. FINDING: APPEALABILITY** – The project is appealable to the Board of Supervisors.

EVIDENCE: (a) Section 20.86.030 of the Monterey County Coastal Implementation Plan.

DECISION

THEREFORE, it is the decision of said Zoning Administrator that said application for Variance be granted as shown on the attached sketch, and subject to the following conditions:

1. The subject Design Approval approves the design of the proposed single family dwelling (2,232 sq. ft.) with an attached garage (440 sq. ft.) on a lot not certified by the California Coastal Commission. The project is in accordance with applicable County ordinances and land use regulations (related to design review regulations) subject to the following terms and conditions. No uses or construction are allowed by this permit. All of the conditions of this permit must be met to the satisfaction of the Director of Planning and Building Inspection. Any

aspect of this permit that is found not to be 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. Nothing specified by this Design Approval is allowed unless additional permits are approved by the appropriate authorities, including the California Coastal Commission. **(Planning and Building Inspection)**

Within 30 days of Approval:

2. The applicant shall record a notice that states: *“A Design Approval (Resolution 030102) was granted by the Zoning Administrator for Assessor's Parcel Number 243-161-017-000 on January 29, 2004. The permit was granted subject to 2 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 within 30 days of approval. **(Planning and Building Inspection)**

PASSED AND ADOPTED this 29th day of January, 2004.

Original Signed By: _____

MIKE NOVO
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.