

JEFF MAIN
ZONING ADMINISTRATOR

COUNTY OF MONTEREY
STATE OF CALIFORNIA

RESOLUTION NO. 60484

A. P. # 009-431-030-000

In the matter of the application of
Guy and Irene Laverty (PLN060484)

FINDINGS AND DECISION

to allow a **Combined Development Permit** in accordance with Title 20 (Zoning) Chapter 20.76 (Combined Development Permits) of the Monterey County Code, for a Combined Development Permit including after-the-fact permits to allow a 138 square foot courtyard/den conversion and a 45 square foot master bedroom addition constructed without permits. Entitlements consist of: 1) a Variance to increase the maximum lot coverage from 35% to 42 % for the unpermitted additions; 2) a Variance to increase floor area ratio (FAR) from 45% to 48% for the unpermitted additions and the construction of a 35 square foot stairway to allow internal access to the existing attic; 3) a Coastal Development Permit to allow development on a property with a positive archaeological report, and Design Approval. The property is located at 26291 Ocean View Avenue, Carmel, Carmel Area Land Use Plan, Coastal Zone, and came on regularly for meeting before the Zoning Administrator on June 28, 2007.

Said Zoning Administrator, having considered the application and the evidence presented relating thereto,

FINDINGS OF FACT

- 1. FINDING: INCONSISTENCY** – The project, as proposed, does not conform to, or is not consistent with, the policies, requirements, and standards of the Monterey County General Plan; the Carmel Area Land Use Plan; the Carmel Area Coastal Implementation Plan (Part 4), and the Monterey County Coastal Implementation Plan (Part 1).

EVIDENCE: (a) The property is located at 26291 Ocean View Avenue, Carmel (Assessor's Parcel Number 009-431-030-000), Carmel Area Land Use Plan. The parcel is zoned Medium Density Residential/ two (2) units per acre with Design Control Overlay, 18 foot maximum height limit, in the Coastal Zone ("MDR/2-D (18) (CZ)"). The subject property complies with all the rules and regulations pertaining to zoning uses and any other applicable provisions of Title 20. In accordance with Section 20.12.060 of the Monterey County Coastal Implementation Plan (Part 1), floor area ratio (FAR) in the MDR/2 Zoning District shall not exceed 45% while building site coverage shall not exceed 35%. As originally permitted, development of the site included a 1,271 square foot residence, 223 square foot attic, and 303 square foot attached garage; creating a floor area ratio (FAR) of 43% and building site coverage of 38%.

(b) Sometime between 1988 and 2006, a 45 square foot bedroom addition and 138 square foot courtyard/den conversion were constructed on the parcel without the benefit of a permit, design review, or an Archaeological

Report as required by Section 20.146.090 of the Carmel Area Coastal Implementation Plan (Part 4). Construction of these additions increased the existing FAR from 43% to 47%, while increasing the existing legal non-conforming building site coverage from 38% to 42% without the issuance of a Variance.

- (c) The project planner conducted a site visit on April 9, 2007 to verify that the project on the subject parcel conforms to the plans listed above.
- (d) The project was reviewed by the Carmel Highlands Land Use Advisory Committee (LUAC) on October 16, 2006. The LUAC recommended approval of the project 5-0 while noting a concern that the project exceeds the allowable area.
- (e) 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 No. PLN060484.

2. 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, Carmel Highlands Fire Protection District, Public Works, Environmental Health Division, and Water Resources Agency. There has been no indication from these departments/agencies that the site is not suitable for the proposed development.

- (b) A Technical report by outside archaeological consultants indicated that there are no physical or environmental constraints that would indicate that the site is not suitable for the use proposed. County staff concurs. The following report has been prepared:

- *"Preliminary Archaeological Report for Assessor's Parcel 009-431-030-000" (LIB060616)* prepared by Mary Doane and Gary Breschini, Salinas, CA, September 12, 2006.

- (c) Materials in Project File No. PLN060484.

3. FINDING: CEQA – The project is statutorily exempt from environmental review.

EVIDENCE: (a) CEQA Guidelines §15270 (a) exempts projects in which a public agency rejects or disapproves.

- (b) See preceding and following findings and supporting evidence.

- (c) Materials in project file PLN060484.

4. FINDING: VARIANCE (Special Circumstance) – A special circumstance does not exist on the property allowing staff to support the issuance of the requested Variances.

EVIDENCE: (a) The parcel is approximately 4,152 square feet (0.09 acres) in size, and is located within an existing developed subdivision adjacent to the City of Carmel-by-the-Sea.

- (b) The parcel maintains a shape and size consistent with adjacent neighbors, is devoid of sensitive vegetation, and contains no notable variations in slope.

- (c) Prior to construction of the master bedroom addition and the courtyard/den conversion, the residence was consistent with allowable floor area ratio (FAR) of 45%. At 38%, existing building site coverage is considered legal non-conforming as it was approved prior to the adopted Local Coastal Program (LCP).
- (d) Staff site visit on April 9, 2007.
- (e) Application and photos in project file PLN060484.

5. FINDING: VARIANCE (Special Privilege) – Granting the Variances as requested may constitute a special privilege.

EVIDENCE: (a) Building Inspection Department files indicate that the residence was constructed in 1973 (BP24760) prior to certification of the Local Coastal Program. As originally permitted, development on the site included a 1,271 square foot residence, 223 square foot attic, and 303 square foot attached garage; creating a floor area ratio (FAR) of 43% and building site coverage of 38%.

(b) Sometime between 1988 and 2006, a 45 square foot bedroom addition and 138 square foot courtyard/den conversion were constructed on the parcel without the benefit of a permit, design review, or an Archaeological Report as required by Section 20.146.090 of the Carmel Area Coastal Implementation Plan (Part 4). Construction of these additions increased the existing FAR from 43% to 47%, while increasing the existing legal non-conforming building site coverage from 38% to 42%. A code enforcement violation (CE 060359) was subsequently initiated on the property.

(c) The proposed project includes two (2) Variances to remedy the code violation, approval of which will allow the structure to exceed both FAR and building site coverage.

(d) In an effort to determine if granting the Variance would constitute a special privilege, staff compared the proposed Variance requests against historic requests for all parcels located in the Carmel Area zoned MDR/2-D (18) that were subsequently granted a Variance allowing the property to exceed either FAR or building site coverage. In addition, staff limited consideration to Variances granted after the adoption of the Local Coastal Program (1983) when the current development standards were established.

(e) A total of five (5) Variances were granted consistent with the above parameters; however, staff was able to support approval of these Variances because the proposals included a reduction of either FAR or building site coverage, or the approval corrected an existing non-conforming condition thereby bringing the properties into greater conformance with the applicable zoning district.

1. PLN020126 (009-403-010-000)

Variance to exceed building site coverage

Variance allowed the property to maintain building site coverage of 38.8%. Project corrected an existing non-conforming condition by structurally attaching the 559 square foot guesthouse to the existing residence.

2. **ZA93062 (009-422-002-000)**

Variance to exceed FAR and building site coverage

Existing residence was considered legal non-conforming as it exceeded both FAR and building site coverage. Variance was supported due to the proposed reduction in floor area ratio from 72% to 69%.

3. **PLN970555 (009-422-015-000)**

Variance to exceed FAR

The project includes the removal of a second story deck and remodeling of an existing two story single family dwelling. The Variance was granted due to the overall reduction in lot coverage from 36.9% to 33.4%.

4. **PLN040559 (009-432-013-000)**

Variance to exceed FAR and building site coverage

The proposed project includes remodeling an existing single family dwelling considered legal non-conforming pursuant to building site coverage and FAR. The Project included a reduction in existing building site coverage from 39.6% to 36.9%

5. **PLN020284 (009-401-007-000)**

Variance to exceed FAR and building site coverage

The project included the removal of an existing sunroom which allowed a net reduction in site coverage from 44% to 38% and floor area ratio from 70% to 65%.

- (f) Unlike the Variances reviewed above, approval of the proposed project would exacerbate the existing legal non-conforming nature of the property by increasing the previously permitted building site coverage from 38% to 42% while allowing the structure to exceed FAR and building site coverage with no planned reduction.
- (g) The violation may be remedied with the restoration of the courtyard/den conversion and the approval of a Combined Development Permit and to allow the 45 square foot bedroom addition and internal stairway addition while alleviating the need for either Variance.
- (h) Materials in project file PLN060484.

6. **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 20.70.050.B.4). No access is required as part of the project as no substantial adverse impact on access, either individually or cumulatively, as described in Section 20.70.050.B.4.c of the Monterey County Coastal Implementation Plan, can be demonstrated.

- EVIDENCE**
- (a) The subject property is not described as an area where the Local Coastal Program requires access.
 - (b) The subject property is not indicated as part of any designated trails or shoreline access as specified in Figures 15 or 16 of the Del Monte Forest Area Land Use Plan.

- (c) No evidence or documentation has been submitted or found showing the existence of historic public use or trust rights over this property.
- (d) Staff site visit on April 9, 2007.

7. FINDING: VIOLATION - The subject property is not in compliance with all rules and regulations pertaining to zoning uses, subdivision, and any other applicable provisions of the County's zoning ordinance.

EVIDENCE: (a) Staff reviewed Monterey County RMA - Planning Department and RMA Building Services Department Monterey County records and determined that a pending code enforcement case (CE060359) exists on the property. The proposed application includes discretionary actions designed to alleviate the existing violation.

(b) Building Inspection Department files indicate that the residence was constructed in 1973 (BP24760) prior to certification of the Local Coastal Program. As originally permitted, development of the site included a 1,271 square foot residence, 223 square foot attic, and 303 square foot attached garage; creating a floor area ratio (FAR) of 43% and building site coverage of 38%.

(c) In January 2006, the applicant came forward with a proposal for a Design Approval to allow minor alterations to the property which included the installation of two dormers, a change in roof pitch from flat to sloped over the den, master bedroom, front entryway, and living area as well as the installation of a 35 square foot stairway to allow internal access to the existing attic/storage area. Staff's research of the application discovered that the site plan submitted by the applicant did not match previously approved building permits for the property.

(d) Subsequently, staff determined that, between 1988 and 2006, a series of minor additions had been constructed on the property without the benefit of permits. These additions include a 138 square foot courtyard/den conversion, and a 45 square foot master bedroom addition for a total expansion of 183 square feet. Construction of the additions increased the existing FAR from 43% to 47%, while increasing the existing legal non-conforming building-site coverage from 38% to 42% without the issuance of a Variance.

(e) Denial of the Variances would require the applicant to restore the property to its previously permitted state. However, by removing the courtyard/den conversion, the master bedroom addition and proposed internal stairway would be permissible with the issuance of a Coastal Administrative Permit and Design Approval.

8. 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: Preceding findings and supporting evidence.

9. **FINDING: APPEALABILITY** - The decision on this project is appealable to the Board of Supervisors and the California Coastal Commission

EVIDENCE: (a) Section 20.86.030 of the Monterey County Zoning Ordinance (Title 20).
(b) The project includes a Coastal Development Permit to allow development on a property with a positive archaeological report; this development is considered conditional and is therefore appealable to the California Coastal Commission in accordance with Section 20.86.080 of the Monterey County Zoning Ordinance (Title 20).

DECISION

It is the decision of the Zoning Administrator of the County of Monterey to refer this Combined Development Permit to the Planning Commission pursuant to Sections 20.04.030F 1&4 of Title 20. These sections and qualifier, allow the Zoning Administrator to refer a project to the Planning Commission if there are any significant policy issues or if the project would set a precedent. Based on the particular facts of this request, the Zoning Administrator determined that approval or denial of the Variance would set a precedent for future Variance requests on similar sized lots in the area, and in so doing may effectively change established policies related to site coverage and floor area ratio standards for that area.

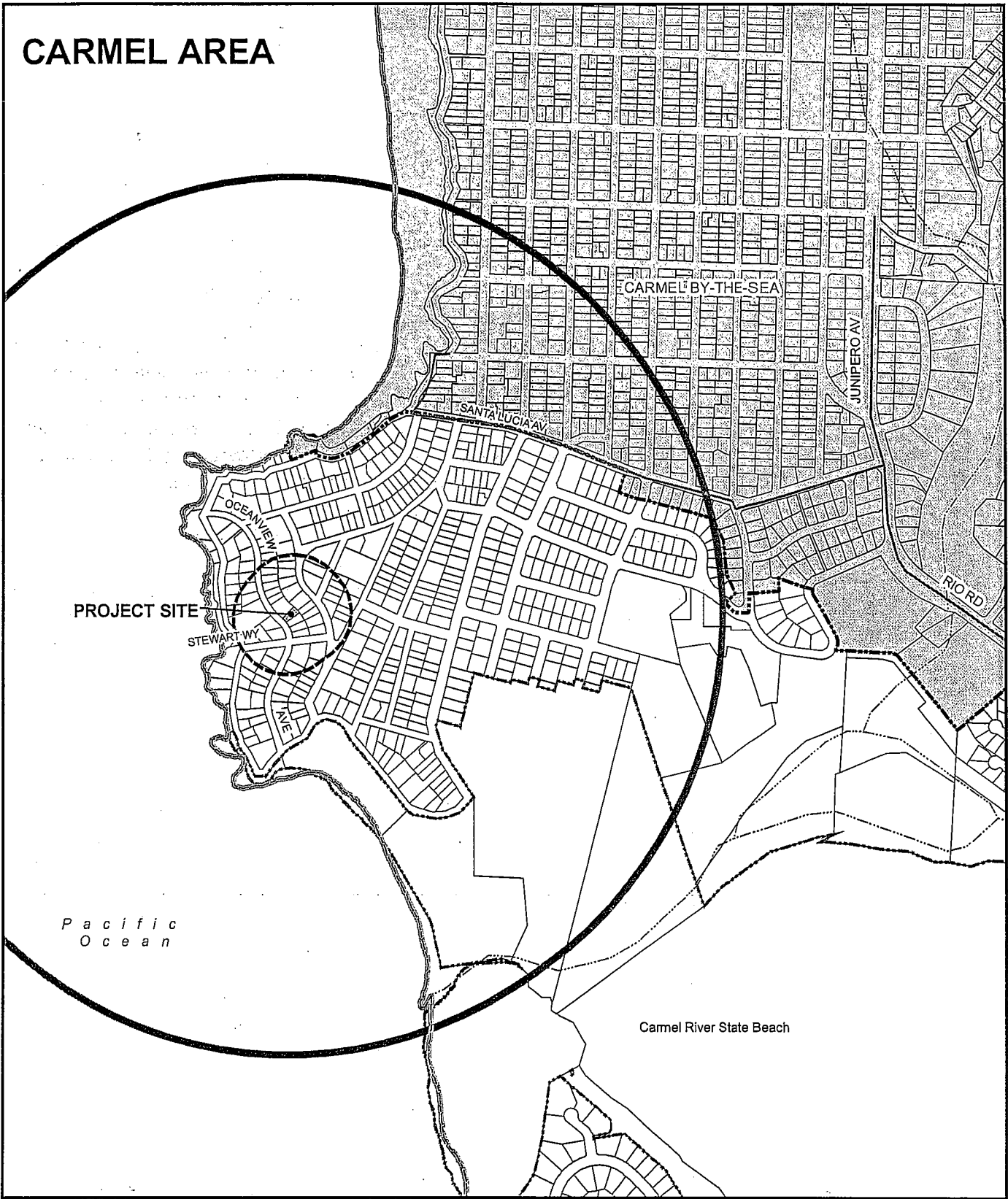
PASSED AND ADOPTED this 28th day of June, 2007.



JEFF MAIN ZONING ADMINISTRATOR

COPY OF THIS DECISION MAILED TO APPLICANT ON JUL 24 2007

CARMEL AREA




APPLICANT: LAVERTY

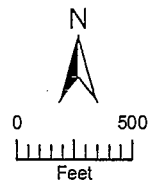
APN: 009-431-030-000

FILE # PLN060484

 300' Limit

 2500' Limit

 City Limits



PLANNER: FRANK