



**Contra
Costa
County**

To: Board of Supervisors
From: John Kopchik, Director, Conservation & Development Department
Date: April 21, 2015

Subject: Appeal of the County Planning Commission's Decision to approve a Variance and associated tree impacts at 200 Sydney Drive in Alamo (File #VR14-1021)

RECOMMENDATION(S):

1. OPEN the public hearing and accept testimony on the appeals of the County Planning Commission decision to approve a variance for a front yard setback and associated tree permit for a proposed single-family residence at 200 Sydney Drive in Alamo. (County File #VR14-1021).
 2. CLOSE the public hearing.
 3. DETERMINE that the project is categorically exempt from the California Environmental Quality Act (CEQA), under Class 3 exemption, CEQA Guidelines Section 15303(a).
 4. DENY the appeals by Gagen McCoy Law Offices, Giyan Senaratne, and Ruth Cranston, and UPHOLD the County Planning Commission's decision to approve County File #VR14-1021.
 5. ADOPT the findings contained in Exhibit #2, attached, as the basis for the Board's decision.
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☒ APPROVE

☐ OTHER

☒ RECOMMENDATION OF CNTY ADMINISTRATOR

☐ RECOMMENDATION OF BOARD COMMITTEE

Action of Board On: **04/21/2015** ☐ APPROVED AS RECOMMENDED ☐ OTHER

Clerks Notes:

VOTE OF SUPERVISORS

AYE: Candace Andersen, District II
Supervisor
Mary N. Piepho, District III
Supervisor
Karen Mitchoff, District IV
Supervisor

ABSENT: John Gioia, District I
Supervisor
Federal D. Glover, District V
Supervisor

I hereby certify that this is a true and correct copy of an action taken and entered on the minutes of the Board of Supervisors on the date shown.

ATTESTED: April 21, 2015

David Twa, County Administrator and Clerk of the Board of Supervisors

By: , Deputy

Contact: Sharon Gong,
925-674-7802

cc:

6. ADOPT the conditions of approval contained in Exhibit #2, attached.

7. DIRECT the Department of Conservation and Development, Community Development Division to post a Notice of Exemption with the County Clerk.

RECOMMENDATION(S): (CONT'D)

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FISCAL IMPACT:

None. The applicant is obligated to pay any additional costs beyond the initial deposit associated with processing the application.

BACKGROUND:

On April 11, 2014, the applicant submitted an application requesting approval of a variance to the side yard, aggregate side yard, and front setbacks, to build a raised driveway, raised entry path, and residence on the vacant lot located at 201 Sydney Drive in Alamo. Included in the variance was a request to remove (1) one Valley Oak and work within the drip lines of (4) four Coast Live Oaks. Nine letters were received requesting a public hearing during the comment period.

On July 7, 2014, the applicant was informed that County Staff would not recommend approval of the variance request as presented, and was advised to eliminate the side yard variance request.

On August 18, 2014, the applicant submitted revised plans for a proposal that eliminated the side yard variance request, but retained the front yard variance request; added (2) two trees for removal, for a total of (3) three removals; and proposed work within the drip lines of (3) three trees.

On October 6, 2014, a public hearing before the County Zoning Administrator was held, testimony was received, and the variance permit was approved with a modification to Condition of Approval #11. Two letters of appeal were received, leading to the scheduling of a public hearing before the County Planning Commission.

On February 24, 2015, a public hearing before the County Planning Commission was held and testimony was received. The County Planning Commission denied the appeals and upheld the County Zoning Administrator's decision to approve the variance and tree permits, adopting two new Conditions of Approval - #12 and #13. Three letters of appeal were received, leading to the scheduling of a public hearing before the Board of Supervisors.

On March 26, 2015, an arborist report addendum and revised tree site plan were submitted by the applicant reflecting the addition of (3) three trees to the tree permit because of proposed work within their drip lines. (bringing the total to 3 trees for removal, and work within the drip lines of 6 trees)

APPEAL OF THE ZONING ADMINISTRATOR'S DECISION: Three letters of appeal were received by the Department of Conservation and Development. One was received

on March 5, 2015, from the law offices of Gagen, McCoy, McMahon, Koss, Markowitz and Raines, on behalf of Jim Farrell, owner of the property at 206 Sydney Drive. The other two appeals were received on March 6, 2015, from Giyan Senaratne and Ruth Cranston, owners of the property at 201 Sydney Drive. Summaries and staff responses to the letters follow. Where appeal points from both letters are similar or essentially the same, they have been summarized and addressed with one response.

A. Summary of Appeal Point #1: The proposed residence is three stories, based on County definitions of “story” in County Ordinance, section 82-4.266. Whether or not the area is enclosed is not a factor. The ordinance states that if the finished floor above is more than 6 feet above grade at any point, it is a story. Either the plans should be revised to be in compliance with the County ordinance, or a 3-story variance should be part of the variance application.

Staff Response: The definition of a “story”, pursuant to the County zoning ordinance, section 82-4.266, is “that portion of a building included between the upper surface of any floor and the upper surface of the floor next above... If the finished floor level directly above a basement or cellar is more than six feet above grade at any point, such basement or cellar shall be considered a story.” Also, pursuant to the County zoning ordinance, section 82-4.290, a “basement” is defined as “any area in a building or structure where the finished floor directly above the area is less than six feet above pre-construction grade or finished grade, whichever is lower.” The open area underneath the lower story of the proposed residence is over six feet at the downhill portions and under six feet in other portions. This leads one to consider that the area may be a “story”, by the above ordinance definition. However, the primary purpose of the residential height limitation ordinance is to prevent the construction of a house that exceeds 35 feet, or that has a full third story that can be utilized by the owner for living purposes. It is clear that by leaving the area beneath the house open, ungraded, and unfinished, no third story is being created that is usable for living purposes, nor is a usable basement even created. If the County were to consider an unfinished, ungraded crawl space beneath a home a *story* whether wholly or partially in excess of six feet, whether enclosed or not, then *every crawlspace greater than six feet at any point* would be considered a story by this interpretation. Such an interpretation has not been supported by the County historically.

Many examples of nearby homes with similar configurations to the subject proposal - that is, two full stories above a tall or partially-tall “crawl” area - have been approved by the County in the past *without* a third story variance. Unlike the 200 Sydney Drive proposal, the crawl area below the house in these examples were enclosed. For example, the drawings for building permit #158694 for the adjacent house at 201 Sydney Drive, has two full stories above a large area with heights measuring up to approximately 10 feet, and was approved in 1989 without requiring a third story variance. (See Exhibit #11.) In another example, drawings for building permit #112473, for an addition to the home at 230 Sydney Drive, shows the addition of a second story above a crawl area that measures up to approximately 11

feet. This permit was issued in 1985, with no third story variance required. (See Exhibit #12.)

Finally, the example of the house approved at 399 Castle Crest Road most clearly supports the County's established historical interpretation of its definition of a "story". The initial design proposed three full stories above an enclosed crawl space on a hillside, and was submitted with an application for a variance to the 2.5-story height limit. (See Exhibit #13.) The application was subsequently withdrawn, and revised drawings were submitted. The County *approved* this revised proposal, where the design was reduced to be two stories above an enclosed, ungraded, and unfinished crawl area with heights measuring up to 11 feet, and building permit #369799 was issued with no third story variance required. (See Exhibit #14.)

Following this initial permit, a revision to the crawl area was submitted where the 11-foot high area was graded and had a finished floor, and construction had already begun. (See Exhibit #15.) According to the Community Development Division, the grading and finished floor made the area a third story, and made the building exceed the 35-foot height limit as well. Upon discovering this non-compliance with County height ordinances, a stop-work order was issued, requiring the "restoration of the pre-construction grade within the crawlspace," to consist of "filling to match the pre-construction grade by poured-in place or block-filled material with steel rod reinforcing bars and capped ~~with~~ with a slab," thereby bringing the building back into compliance with height limits in the zoning district.

Thus, the County's record of previous approvals, as evidenced by the above examples, reflects a clear pattern of approving house configurations consisting of two full stories above an ungraded, unfinished area, without requiring a variance to the 2.5 story height limit. It is furthermore an indication of the County's recognition that building on a steep hillside often results in a "remainder area" beneath the house that is not intended to be included in the living space, and that this "remainder area" - if left ungraded, unfinished, and unusable - is not considered to be a story.

The configuration that is being proposed by the applicant for 200 Sydney Drive is consistent with the County's past approvals, as demonstrated with the previous examples. Both the Zoning Administrator (ZA) and the County Planning Commission (CPC) have determined that the design is fully compliant with height limits in the zoning district. Nevertheless, to alleviate appellant concerns of future non-compliance with building heights in excess of 35 feet and/or a potential third story, condition of approval #11 was modified by the Zoning Administrator, and #12 and #13 (see Exhibit #3) were added by the CPC as safeguards against non-compliance, though no such safeguards are typically necessary. Condition of approval #11 requires that the applicant verify the as-built building height according to a survey, upon the completion of the framing for each floor of the building. Condition of approval #12 requires the area under the lower floor to remain open, ungraded and unfinished. And finally, condition of approval #13 states that if the proposed house is to be redesigned to satisfy the building code, the applicant is

required to submit revised drawings for the review and approval by the Community Development Division. Any new non-compliance created by the revision will be subject to the appropriate permit approval requirements.

In conclusion, staff, the Zoning Administrator and the County Planning Commission determined the proposed structure to be three stories according to County zoning ordinances, and as shown in the most recent drawings, dated December 29, 2014, the proposed residence complies with the 35-foot and the 2.5-story height limits at all points.

- B. ***Summary of Appeal Point #2: Mr. Rassai stated that the ground level area is "about 3.5 feet from average grade plane" which is inconsistent with the County code. Civil engineers have confirmed that the proposed residence is three stories.***

Staff Response: When assessing compliance with height limitations under the County and Zoning Ordinance, the County Community Development Division measures building height from either natural grade or finished grade, whichever is lower. According to County zoning ordinance, section 82-4.214, building height "may be measured from finished grade when such grade is below natural grade. Height shall be measured from natural grade when the finished grade is higher than natural grade." In contrast, the California Building Code (CBC) uses an "average grade plane" to calculate height. Inconsistencies between the CBC and County zoning ordinances are known and recognized and reflect the distinct and independent purposes of the two sets of requirements. Therefore, the determination of whether the open area qualifies as a story according to the CBC (as opposed to County zoning ordinances) cannot be used as the basis for decisions to implement the Zoning Ordinance. The CBC applies to the project at the time of the building code plan check process and within the context of building inspection and is not applied to the project for planning purposes.

- C. ***Summary of Appeal Point #3: A potential solution is to add the following condition to the variance: The applicant shall submit plans to Contra Costa County Planning Department that shows compliance to Section 82-4.266 and Section 82-4.214 of the County Zoning Code. Submitted plans shall show that the finished floor of the lowest floor is not more than six feet from the existing natural grade. This dimension shall be verified by planning staff prior to approval of the requested variance.***

This dimension shall be verified as follows:

1. ***The applicant is required to establish the existing natural grade by providing a report from a licensed surveyor. This report must be included with the building permit application.***
2. ***Contra Costa County Building Department staff will verify that the finished floor of the lowest floor is not more than six feet from the existing natural grade prior to issuance of building permit.***
3. ***The applicant is required to establish that the finished floor of the lowest floor is not more than six feet from the existing natural grade prior to framing the second***

floor by providing a report from a licensed surveyor.

Staff Response: Based on the Appeal Point #1 discussion, the CPC does not consider the open area a “story”. Therefore, the six-foot restriction does not apply. To ensure that the structure is built as drawn, and is compliant with the 35-foot overall height restriction, condition of approval #11 of the attached Findings and Conditions of Approval is already in place, requiring that “Upon the completion of the framing for each floor of the building and prior to final inspection of the residential framing, the Applicant’s licensed engineer must provide a roof plan and survey to verify that the building height does not exceed the height shown on the approved plans.” Additionally, as standard practice, the County Building Inspection Division requires for *all* new residences, the submittal of a survey letter from a licensed surveyor or civil engineer at the “Foundation Forms” inspection, stating that the “Structure is placed according to the approved set of plans.” No additional conditions of approval are necessary to support the CPC approval of the front yard variance and tree permits, which is the decision that is being appealed to the Board of Supervisors at this hearing.

D. Summary of Appeal Point #4: The Planning Commission was not provided with the latest, revised drawings for the project, and therefore made a decision on incomplete or mis-information from the applicant.

Staff Response: The staff report for the CPC hearing on February 24, 2015, included the plans dated August 18, 2014, but not the revised drawings dated December 29, 2014. The revised drawings dated December 29, 2014, contained corrections which did not affect the third story issue. As discussed previously, the CPC does not consider the open area a story, thus the six-foot restriction does not apply. Even if the six-foot limit were applicable, the revisions that were made to produce the current drawing set (December 29, 2014) are irrelevant to this discussion, because the previous drawings already showed that portions of the open area exceeded six feet. The revisions were made in response to previous appellant concerns about the accuracy of the drawings. Staff had cross-checked the drawings against topo values, and found minor mistakes. The new drawings contained corrected grades that reflected a 14-foot height at the tallest point of the open area, whereas the old drawings showed a 10-foot height. Also, the corrected grades caused a small portion of the roof above the master bedroom to exceed the 35-foot height limit, which was addressed by sloping the roof at the excess- a change also shown in the new drawings. Thus, the corrections did not affect the argument for a third story resulting from heights exceeding six feet. The revisions also did not provide any new information that would have affected the decision on the appeal to the variance approval for the front yard or the tree permit. Thus, the drawings provided to the CPC were more than adequate to inform the commission for their decision.

It should be noted that it is not uncommon for applicants to submit revised plans at various stages of planning review.

E. Summary of Appeal Point #5: The County Planning Commission’s findings for

granting the front setback variance to construct the raised entry pathway are not supported by evidence.

- 1. The variance would be a special privilege, and does not meet the intent and purpose of the land use district. County setback requirements dictate the size and type of home that can be found in the zoning district. The lot was clearly intended for homes similar in size to neighboring homes. The applicant proposes a home on stilts that exceeds 7,000 square feet. The largest home on Sydney is 4,039 square feet. The proposed residence is 210% the size of the average home and 54% larger than the largest home on the street.***
- 2. The applicant testified that the home is compatible with neighboring homes. Allowing the over-sized home to exceed the setback requirements by such a large margin would be a grant of special privilege.***
- 3. There are no special circumstances applicable to the property, where other neighboring residences area are also on hillsides. Six out of eight homes along the northern slope of Sydney Drive have an entry walkway that comes directly off of the driveway, rather than being a separate entry from the street. This more common entrance type would eliminate the need for a variance. The large size of the house creates the need for the variance.***

Staff Response:

1. The County zoning ordinance has no restrictions on the square footage (floor-area ratios) of homes in this zoning district. Rather, zoning restrictions define a general building envelope within which defined construction can occur. Variances to these restrictions may be granted if the specifics of the site present difficulties to the owner in the course of designing an appropriate development for the site, if the approval of the variance does not constitute a special privilege to the owner, and if the project otherwise meets the intent of the zoning district. Based on the discussion in the attached Findings and Conditions of Approval, the CPC determined that the project, as proposed, satisfies these criteria. In addition, the lot is not a substandard lot in the zoning district, and a design review is not required for the proposed development. Therefore, a discussion of the size of the proposed house, outside of compliance with zoning restrictions, is not required.

Nevertheless, staff recognizes that the proposed home is compatible with neighboring homes with regard to its presentation on the street and in the neighborhood. When the proposed residence's height from the street level and its width at street level are compared to those of nearby existing houses, they are comparable to or *less than* the height and width of the nearby homes. The proposed home, when measured from the street level to the top of the roof peak, measures only 13 feet. Thus, the house appears as a single story home from the street, while other nearby homes have a taller and greater presence on the street. Similarly, the proposed home measures approximately 65 feet wide at the front, while homes adjacent and across the street, for instance, measure 65 feet, 69 feet, and 67 feet wide on the street. Thus, in terms of street presence

and massing, the proposed home has an equivalent impact or less of an impact on the neighborhood than existing neighboring homes.

2. The grant of a front yard variance for the proposed home would not be a special privilege, since three front yard variances have been granted to 218 and 206 Sydney Drive (the same variance granted twice to 218 Sydney to rebuild a garage in the front setback). These previous approvals demonstrate an acknowledgment by the County of the difficulties of developing some of the lots on Sydney Drive due to significant topographical site constraints.
3. Because of the steepness at the front of the subject property, any structure bridging the street and the upper level of the home would likely require a variance. Thus, an alternate driveway location that led to the upper floor to accommodate a path leading from it to the front door, as proposed by the appellant in a document dated October 6, 2014, would likely still require a variance. (See Exhibit #10.) This likelihood was confirmed by staff with a senior County grading inspection officer. Other options explored by staff were not found to be feasible.

F. ***Summary of Appeal Point #6: The topo map provided is from 1985. A more current, wet stamped topo map is needed to verify that accurate information is being used to measure building height. Even Darwin Myer's peer review refers to the topo map as "incomplete/inadequate" and says it should be wet signed and stamped.***

Staff Response: The survey provided by the applicant is a copy of the original survey, signed by Albert A. Milano, L.S. 2967. The applicant states that he has only one copy of the survey and does not have original print. Though the survey was prepared in 1985, and erosion of the site could have occurred since that time which may have changed the topography of the site, Staff confirmed with the County Geologist (Darwin Myers Associates - DMA) that any topography changes from erosion would be minor, and that the survey is valid and adequate for planning determinations. Additionally, there is no indication that there has been any intentional grading on the site since this survey was done.

The statements in the geologic peer review by DMA, placed in context of the larger report, are referring to the adequacy of the survey for *geotechnical* evaluation. As discussed above, DMA confirmed that the survey is adequate for *planning* determinations. However, Staff recommends that the Board of Supervisors add a new condition - condition of approval #8.a - which requires that an updated survey, wet-stamped by a licensed surveyor or civil engineer be submitted prior to the issuance of building permits.

G. ***Summary of Appeal Point #7: The size and boxiness of the home affects the number of trees that are being removed. The tree report omits two code protected trees on the southeast corner of the lot. The plans show a driveway in this area.***

Staff Response: Although the size of the house footprint does affect how many trees may be impacted by a house design, any owner of a property has a right to build a

home of a reasonable size on their lot. Zoning ordinances which dictate setbacks and height limits serve to restrict the house size to a reasonable limit. The proposed house, with the exception of the requested front yard variance being considered here, conforms to the setback and height limitations for the lot.

Additionally, as discussed in the previous staff reports, the lot is populated with numerous mature, native trees, which are of similar size to those proposed to be removed, which are healthy, and will not be impacted at all by the proposed construction. Aerial photographs show that the site is populated with a large grove of mature trees which covers roughly 40% of the northern side of the lot, and more mature trees on the southwestern portion. Thus, the removal of the proposed trees satisfies the tree permit finding that “the permit issuance will not negatively affect the sustainability of the resource.” Additionally, the proposal satisfies the finding that “reasonable development of the property would require the alteration or removal of the tree and this development could not be reasonably accommodated on another area of the lot.” The applicant has already shifted the house northward on the property to eliminate a side yard variance, and the remainder of the site is very difficult to build on because of steeper topography.

Shifting the house location on the lot to eliminate the need for a side yard variance resulted in a proposal of three tree removals, where originally, only one tree removal was proposed. Because the additional tree removals would not negatively affect the sustainability of the resource, and because reasonable development could not be accommodated elsewhere on the lot, the elimination of the side yard variance request with the revised house location, even though it would cause the removal of two more trees, better satisfies the overall intent of zoning restrictions in the neighborhood.

An arborist report addendum and revised tree plan were submitted by the applicant on March 25, 2015, adding the previously omitted three trees. These three Redwood trees are located on the adjacent property, but proposed construction will occur within their drip lines. Therefore, the three trees will be added to the tree permit for preservation, and Staff recommends that the Board of Supervisors adopt a revision to condition of approval #4.a.i to reflect the additional tree restitution required.

CONSEQUENCE OF NEGATIVE ACTION:

The variance to the front yard for the entry pathway, and the tree permit would be denied, and the applicant would be required to revise the house design to eliminate the front yard variance request and/or the tree impact. If the Board determines that a third story is being proposed, it may require that the house design be revised to eliminate the third story, or require the applicant to request a variance for exceeding the 2.5-story height limit for the zoning district.

CHILDREN'S IMPACT STATEMENT:

No impacts are associated with the proposal to construct a new single-family residence within a residential zoning district.

CLERK'S ADDENDUM

CONTINUED TO May 5, 2015 at 9:00 a.m.

ATTACHMENTS

CPC Resolution 7-2015

Exhibit 2 - Findings and Conditions of Approval with Staff proposed modifications

Exhibit 3 - CPC Staff Report and Conditions of Approval adopted by the CPC on February 24, 2015 (includes staff report for Zoning Administrator Hearing on October 6, 2014)

Exhibit 4 - Revised Project Plans, dated December 29, 2014

Exhibit 5 - Arborist Report Addendum and Revised Tree Site Plan, received March 26, 2015

Exhibit 6 - Appeal letter from Gagen McCoy, dated March 5, 2015

Exhibit 7 - Appeal letter from Giyan Senaratne, dated March 6, 2015

Exhibit 8 - Appeal letter from Ruth Cranston, dated March 6, 2015

Exhibit 9 - Petition submitted by Sydney Drive neighbors, received February 24, 2015

Exhibit 10 - Document submitted by Gagen McCoy, received October 6, 2014, p.17

Exhibit 11 - Building Permit #158694 Drawing for 201 Sydney Drive

Exhibit 12 - Building Permit #112473 Drawing for 230 Sydney Drive

Exhibit 13 - House Drawing submitted for VR14-1064, 399 Castle Crest Road

Exhibit 14 - Building Permit #369799 Drawing for 399 Castle Crest Road

Exhibit 15 - Building Permit #399832 Drawing for 399 Castle Crest Road

Exhibit 16 - Neighbor Petition Submitted to Supervisor Anderson, dated March 27, 2015