



**Contra
Costa
County**

To: Board of Supervisors

From: John Kopchik, Director, Conservation & Development Department

Date: February 12, 2019

Subject: Hearing to Consider Appeal of Denied Reasonable Accommodations Request Related to the Conditions of Approval for County File #MS06-0037

RECOMMENDATION(S):

1. OPEN the hearing on the appeal of the Conservation and Development Director's determination on a reasonable accommodation request for relief from conditions of approval and zoning restrictions for a 2-lot subdivision at 78 Grandview Place in unincorporated Walnut Creek.
2. RECEIVE testimony.
3. CLOSE the hearing.
4. DENY the appeal by Mary Dunne Rose and UPHOLD the Department of Conservation and Development (DCD) Director's November 2, 2018 determination on the reasonable accommodation request.
5. GRANT Ms. Rose's reasonable accommodation request to allow a 10-foot front setback (southern boundary), a 5-foot side yard (western boundary), and a covered front porch within the 10-foot front setback, and to allow the import and export of fill material to and from the project site sufficient to construct a wheelchair ramp not to exceed 6 inches in

☒ APPROVE

☐ OTHER

☒ RECOMMENDATION OF CNTY
ADMINISTRATOR

☐ RECOMMENDATION OF BOARD
COMMITTEE

Action of Board On: **02/12/2019** ☒ APPROVED AS RECOMMENDED ☐ OTHER

Clerks Notes:

VOTE OF SUPERVISORS

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: February 12, 2019

Contact: Sean
Tully/(925) 674-7800

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

By: , Deputy

cc:

height at the entrance of the residence, consistent with the DCD Director's November 2, 2018 determination.

RECOMMENDATION(S): (CONT'D)

6. DENY Ms. Rose's reasonable accommodation request for relief from Condition of Approval No. 12 (arborist monitoring during grading activities), No. 17 (opportunity for neighbors to review landscaping plans), No. 18 (restitution trees to be planted prior to issuance of building permit), No. 29 (limit on construction-related vehicles access to site), Nos. 42, 43, and 44 (widening of Panoramic Way/deferred improvement agreement), No. 45 (proof of access to conduct off-site improvements), No. 49 (dedication of right-of-way along Grandview Place), No. 50 (dedication of right-of-way along Panoramic Way), and Nos. 53 and 54 (collect and convey requirements).

FISCAL IMPACT:

The DCD has waived all fees for review of Ms. Rose's reasonable accommodation request. Staff costs are covered by DCD's Land Development Fund.

BACKGROUND:

This hearing is to consider the appeal filed by Mary Dunne Rose ("Appellant") of the Department of Conservation and Development ("DCD") Director's determination on a reasonable accommodation request for relief from conditions of approval and zoning restrictions for a 2-lot subdivision at 78 Grandview Place in unincorporated Walnut Creek (County File #MS06-0037).

DCD REASONABLE ACCOMMODATION POLICY

The Federal Fair Housing Act, the California Fair Employment and Housing Act, and the California Disabled Persons Act (collectively, the "Fair Housing Acts") prohibit discriminatory land use and zoning regulations that deny housing opportunities to people with disabilities. The Fair Housing Acts require counties to provide reasonable accommodation in land use and zoning rules, policies, practices, and procedures where it may be necessary to provide individuals with disabilities equal opportunity in housing.

DCD has implemented a policy to address reasonable accommodation requests in compliance with the Fair Housing Acts. See Attachment A. Upon receipt of a reasonable accommodation request, the Deputy Director reviews and either approves or denies the request according to the policy. The Deputy Director's determination is appealable to the Director. The Director's determination is appealable to the Board of Supervisors.

GENERAL INFORMATION

Site Description: The subject property is a 0.48-acre property identified as 78 Grandview Place (APN 184-462-008), in the unincorporated area of Walnut Creek. The property is relatively flat along its southern boundary with Grandview Place, but becomes very steep and slopes downward in the northern portion of the property adjacent to Panoramic Way. There are large mature trees located in the steep northern portion of the property, and

along the eastern property line. The southwestern corner of the property has been developed with a single-family residence and associated improvements. There are no curb and gutter improvements along the Grandview Place or Panoramic Way frontages.

General Plan:

Land Use Designation: The subject property is located within a Single-Family Residential, Medium Density (SM) General Plan Land Use Designation.

Zoning:

Zoning District: The subject property is located within a Single-Family Residential (R-10) zoning district.

COUNTY FILE #MS06-0037

On December 14, 2006, the Zoning Administrator conditionally approved County File #MS06-0037 to allow the subdivision of the subject property into two parcels. The subdivision was approved with various conditions of approval that would need to be satisfied by the property owner prior to recordation of the Parcel Map or development of the resultant parcels. The conditions of approval include, but are not limited to, securing public water and sewer facilities, payment of planning review fees, and the construction of drainage improvements. In addition, the conditions of approval also include design guidelines and construction phase restrictions for the future development of the vacant resultant parcel (Parcel-B). In 2006, Ms. Rose agreed to the approved conditions of approval, and at no time alleged a disability or requested reasonable accommodation. The approved conditions of approval and tentative map for County File #MS06-0037 are attached as Attachment B.

On May 5, 2014, Ms. Rose submitted a Compliance Review Application (County File #CV14-0042) to DCD to initiate the process for compliance with the conditions of approval that would allow recordation of the Parcel map and the construction of a new single-family residence on Parcel-B. Over the next three years Ms. Rose submitted multiple versions of revised plans and other draft documents to both DCD and the Public Works Department for review, but to date Ms. Rose has not complied with the conditions of approval necessary to record the Parcel Map.

APPELLANT'S REASONABLE ACCOMMODATION REQUEST

On October 2, 2017, Ms. Rose submitted written correspondence to the DCD and the Public Works Department requesting reasonable accommodations. The document did not specify the nature or scope of the accommodations being requested, but did include a summary of Ms. Rose's disability, a preliminary site plan for the future residence on Parcel-B, and a statement indicating that extra space is necessary to accommodate a 5-foot wheelchair turning radius. On October 20, 2017, Ms. Rose submitted a revised

reasonable accommodations request that included details of the specific accommodations that were being requested. See Attachment C.

Ms. Rose's October 20, 2017 reasonable accommodation request sought relief from certain conditions of approval for County File #MS06-0037 and zoning standards that would control development of Parcel-B. Ms. Rose's requests are summarized as follows.

1. Reduced Structure Setbacks/Yards: Ms. Rose requests approval of a 10-foot front setback (minimum of 20 feet required), a 5-foot side yard (minimum of 10 feet required) along the western boundary, and to allow a covered front porch to be closer than 10 feet to the front property line (minimum of 10 feet required). Ms. Rose asserts that the requested relief is necessary to accommodate her desire to construct the proposed house further south on the property within the "flat" area of the lot, which would reduce the need for interior stairs and provide more space for wheelchair turning.
2. Grading (Condition No. 11): Ms. Rose requests to be allowed to import or export fill from the site. Condition No. 11 requires that cut and fill on the site must be balanced. Ms. Rose asserts that the requested relief is necessary to allow for the construction of a wheelchair ramp at the entry of the residence.
3. Arborist Monitoring (Condition No. 12): Ms. Rose requests that an arborist not be required to be on-site during grading activities.
4. Review of Landscaping by Others (Condition No. 17): Ms. Rose requests that only three neighbors be given the opportunity to review and comment on the landscaping. Condition No. 17 requires Ms. Rose to submit a landscape plan to the three contiguous neighbors for review and comment. Ms. Rose interpreted the condition to require that nine total neighbors be allowed to review and comment on the landscaping. DCD staff has clarified to Ms. Rose that the condition refers only to neighbors from the three adjacent properties.
5. Timing of Tree Planting (Condition No. 18): Ms. Rose requests that she not be required to plant trees prior to the construction of the residence. Condition No. 18 requires that 12 trees be planted prior to issuance of building permits.
6. Construction-Related Vehicle Limit (Condition No. 29): Ms. Rose requests that the limit on construction-related vehicle access to the site be eliminated. Condition No. 29 limits construction-related vehicle access to the site to not more than two vehicles at a time.
7. Drainage Requirements (Condition No. 54): Ms. Rose requests that she not be required to perform on-site and off-site drainage facility upgrades to meet collect and convey requirements. Condition No. 54 requires Ms. Rose to construct improvements to existing downstream drainage facilities that receive storm water runoff from the project site.

APPELLANT'S DISABILITY

Ms. Rose has alleged that both she and her spouse each suffer from a disability, as defined by the Fair Housing Acts. DCD staff has confirmed that Ms. Rose's disability limits her mobility.

DCD DEPUTY DIRECTOR DETERMINATION

On December 5, 2017, the DCD Deputy Director denied each of Ms. Rose's reasonable accommodation requests. See Attachment D. The Deputy Director determined that the requests for relief related to Condition Nos. 12, 17, 18, 29, and 54 were unrelated to Ms. Rose's disability. Regarding Ms. Rose's requests related to relief from setback requirements and the grading limitations in Condition No. 11, the Deputy Director determined that Ms. Rose had not provided sufficient information for the Deputy Director to determine that relief was necessary to make housing available to Ms. Rose on Parcel-B. The Deputy Director determined that DCD staff had requested additional information from Ms. Rose, but that Ms. Rose had refused to provide the requested information. On December 12, 2017, Ms. Rose appealed the Deputy Director's determination.

Pursuant to the DCD's Reasonable Accommodation Policy, the appeal was forwarded to the DCD Director for review and decision.

DCD DIRECTOR DETERMINATION

On May 9, 2018, the DCD Director denied Ms. Rose's appeal and upheld the Deputy Director's determination to deny Ms. Rose's reasonable accommodation request. See Attachment E. The Director determined that Ms. Rose's compliance with Condition Nos. 12, 17, 18, 29, and 54 was unrelated to Ms. Rose's disability and denied Ms. Rose's request for relief from those conditions. The Director also denied Ms. Rose's request for relief from setback requirements and the grading restrictions in Condition No. 11, and determined that Ms. Rose had declined to provide requested additional information with respect to those requests. The Director's determination invited Ms. Rose, again, to provide additional information regarding Ms. Rose's request for relief from setback requirements and the grading restrictions in Condition No. 11.

APPEAL OF THE DIRECTOR'S DETERMINATION

On May 21, 2018, Ms. Rose submitted a 234-page appeal of the Director's determination to DCD. On June 5, 2018, Ms. Rose submitted a revised 17-page appeal to the Office of the Clerk of the Board. See Attachment F. The primary points of the appeal and DCD staff responses are summarized in Attachment G.

DCD DIRECTOR REVISED DETERMINATION

On November 2, 2018, the DCD Director issued a revised determination. See Attachment I. The Director issued the revised determination based on additional information and documents submitted by Ms. Rose on September 11, 2018, as requested by DCD staff and the previous determination letters. See Attachment H. The new documentation included site plans, residence plans, drawings, and additional information

detailing the basis for several of Ms. Rose's requests. The DCD Director's November 2, 2018 determination granted Ms. Rose's request for reasonable accommodation in part. Specifically, the following accommodations related to setback and yard requirements and the grading restrictions in Condition No. 11 were granted:

1. Ms. Rose may construct the proposed residence with a 10-foot front setback (southern boundary), a 5-foot side yard (western boundary), and a covered front porch within the 10-foot front setback. The DCD Director determined that the requested accommodation requirements is necessary to make housing on Parcel-B available to Ms. Rose based on Ms. Rose's desired configuration for specific elements (e.g., wheelchair accessible hallways, limited amount of stairs, ADA-compliant rooms) and need to reduce the distance from the residence to the street to facilitate access to the street and around the perimeter of the residence.
2. Ms. Rose may import and export fill material to and from the site sufficient to construct a wheelchair ramp not to exceed 6 inches in height at the entrance of the residence. The DCD Director determined that the requested accommodation is necessary to make housing on Parcel-B available to Ms. Rose based on Ms. Rose's need for safe access to the residence and Ms. Rose's plans for construction of the proposed wheelchair ramp.

The revised determination stated that the granted accommodations are subject to all other required conditions and approvals, and that the accommodations would be implemented during a future development plan and grading plan approval process. The revised determination stated that the granted accommodations are specific to Ms. Rose's project and expire if the need for which the accommodation was granted no longer exists.

The revised determination denied Ms. Rose's other requests. The DCD Director determined that Ms. Rose's compliance with Condition No. 12 (arborist monitoring during grading activities), No. 17 (opportunity for neighbors to review landscaping plans), No. 18 (restitution trees to be planted prior to issuance of building permit), No. 29 (limit on construction-related vehicles access to site), and No. 54 (drainage requirements) is unrelated to Ms. Rose's disability, and that relief from the conditions was not necessary to make housing on Parcel-B available to Ms. Rose.

ADDITIONAL REASONABLE ACCOMMODATION REQUESTS

On October 26, 2018, Ms. Rose requested additional reasonable accommodation from different requirements and conditions of approval. These requests pertain to conditions of approval administered by the Public Works Department. See Attachment J. Ms. Rose's additional requests are summarized as follows.

- 1) Widening of Panoramic Way/Deferred Improvement Agreement (Condition Nos. 42, 43, and 44): Ms. Rose requests that the conditions be rescinded. Condition Nos. 42, 43, and 44 require Ms. Rose to construct eight feet of pavement widening and transitions, necessary retaining walls, and necessary longitudinal and transverse drainage along the project frontage of Panoramic Way, or to enter into a deferred

improvement agreement. If called upon by the County, under the deferred improvement agreement, Ms. Rose must submit improvement plans prepared by a registered civil engineer to the Public Works Department and pay the applicable fees, and upon approval by Public Works, construct the improvements.

2) Proof of Access (Condition No. 45): Ms. Rose requests that the condition be rescinded. Condition No. 45 is a standard condition that requires Ms. Rose to obtain all necessary entitlements and/or permission to construct any off-site improvements.

3) Dedication of Right-of-Way along Grandview Place (Condition No. 49): Ms. Rose requests that the condition be rescinded. Condition No. 49 requires Ms. Rose to dedicate to the County a right-of-way along the project frontage of Grandview Place to allow for future widening of Grandview Place, except the condition states that an exception was granted and no dedication along the project frontage of Grandview Place is required.

4) Dedication of Right-of-Way along Panoramic Way (Condition No. 50): Ms. Rose has not made a request with respect to Condition No. 50, however DCD staff believes Ms. Rose intended to request that Condition No. 50 be rescinded rather than Condition No. 49. Condition No. 50 requires Ms. Rose to dedicate to the County 5 feet of right-of-way along the project frontage of Panoramic Way to allow for future widening of Panoramic Way.

5) Collect and Convey (Condition Nos. 53 and 54): Ms. Rose requests that the conditions be rescinded, or in the alternative that Ms. Rose only be required to pay the Drainage Area 15A Drainage Fee. Condition Nos. 53 and 54 require Ms. Rose to safely collect and convey all storm water from the property and to ensure that downstream properties and facilities are not adversely impacted. These conditions are imposed on all subdivisions pursuant to Division 914 of the County Ordinance Code for the purpose of protecting the subject property and downstream properties. The Drainage Area 15A Drainage Fee is a separate fee requirement imposed by the Contra Costa County Flood Control and Water Conservation District to pay for regional drainage facilities within the Drainage Area 15A boundary. The fee is in addition to the collect and convey requirements of Division 914 referenced in Condition Nos. 53 and 54, which address local drainage.

COUNTY RESPONSE TO ADDITIONAL REQUESTS

Ms. Rose sent the October 26, 2018 letter requesting additional reasonable accommodations to the Public Works Department. Public Works staff communicated and met with Ms. Rose on several occasions to assist Ms. Rose in understanding and satisfying the conditions. Based on those communications and review of the requests, the Public Works Department recommends that the requests be denied because Ms. Rose's ability to comply with Condition Nos. 42, 43, 44, 45, 46, 50, 53, and 54 is unrelated to Ms. Rose's disability.

The DCD Deputy Director and Director have reviewed the Public Works Department's recommendation and recommend that the Board deny Ms. Rose's additional reasonable accommodation request because Ms. Rose's ability to comply with Condition Nos. 42, 43, 44, 45, 46, 50, 53, and 54 is unrelated to Ms. Rose's disability. Relief from these conditions is not necessary to make housing on Parcel-B available to Ms. Rose.

CONSEQUENCE OF NEGATIVE ACTION:

The requested accommodations would not be granted.

CLERK'S ADDENDUM

Appellant Mary Rose Dunne did not wish to speak, but submitted written materials (attached). CLOSED the hearing; ADOPTED staff recommendations, to include denial of reasonable accommodation request for Conditions of Approvals No. 25 and No. 48.

ATTACHMENTS

Attachment A - Reasonable Accommodation Policy

Attachment B - Approved Conditions of Approval and Tentative Map for County File #MS06-0037

Attachment C - Appellant Request for Reasonable Accommodation (10-20-2017)

Attachment D - DCD Deputy Director's Determination (12-5-2017)

Attachment E - DCD Director's Determination (5-9-2018)

Attachment F - Appellant Appeal Letter (6-5-2018)

Attachment G - Appeal Points and DCD Staff Responses

Attachment H - Appellant Letter Responding to Request for Additional Information (9-11-2018)

Attachment I - DCD Director's Revised Determination (11-2-2018)

Attachment J - Appellant Request for Additional Reasonable Accommodation (10-26-2018)

Attachment K - Appellant Supplemental Appeal Letter (12-3-2018)

Attachment L - Index of Correspondence and Meetings