



# COUNTY OF SANTA CRUZ

0733

---

## PLANNING DEPARTMENT

701 OCEAN STREET, 4<sup>TH</sup> FLOOR, SANTA CRUZ, CA 95060  
(831) 454-2580 FAX: (831) 454-2131 TDD: (831) 454-2123  
KATHLEEN MOLLOY PREVISICH, PLANNING DIRECTOR

July 28, 2015

**Agenda Date: August 18, 2015**

Board of Supervisors  
County of Santa Cruz  
701 Ocean Street  
Santa Cruz, CA 95060

**Subject: CONSIDER TAKING JURISDICTION OF TWO SEPARATE APPEALS OF THE PLANNING COMMISSION APPROVAL OF A RESIDENTIAL DEVELOPMENT PERMIT FOR THE CONSTRUCTION OF ONE SECOND UNIT AT THE SECOND FLOOR ABOVE A DETACHED GARAGE AND THE APPROVAL OF DESIGN GUIDELINES FOR STRUCTURES TO BE CONSTRUCTED IN CONJUNCTION WITH A MINOR LAND DIVISION AT 3304 WINKLE AVENUE IN LIVE OAK**

Members of the Board:

Application 141007, as considered by the Planning Commission, is a proposal to divide an existing 31,942 square foot parcel located at 3304 Winkle Avenue (APN 025-361-26) into three single-family parcels, and to develop one single-family dwelling, with an attached and/or detached garage and an Accessory Dwelling Unit (ADU) on each parcel, with the ADUs located above the garages on parcels 2 and 3, and to grade approximately 560 cubic yards of material. This proposal requires approval of a Tentative Map for a Minor Land Division, a Residential Development Permit to allow for ADUs that exceed one-story and 17 feet in height, Design Guidelines Review and Preliminary Grading Review.

On May 13, 2015, Application 141007 was approved by the Planning Commission, subject to an added condition of approval that required that the design and layout of one of the two rear parcels be revised, to shift an ADU at the second floor above the detached garage to a location built on grade.

As set out in County Code 18.10.340, written notice of appeals of an approval of a decision of the Planning Commission are required to be filed with the Clerk of the Board of Supervisors within fourteen calendar days of the date of approval. However, in accordance with Article 2 of the California Subdivision Map Act, Sections 66452.5(a)(1) & (2) and 66452.5(d)(1) (Attachment 5), and as set out in County Code Sections 14.01.312 et. seq. and 18.10.340(A) (Attachment 6), appeals of approvals of Tentative Maps must be filed within ten calendar days of the date of approval. The deadlines for filing an appeal of the decision of the Planning Commission were therefore Monday May 25, 2015 for the Tentative

Map (in accordance with County Code section 18.10.310(D), because the tenth calendar day following the approval of 141007 fell on a Saturday, the deadline was extended to the next business day), and Wednesday May 27 for an appeal of the associated approval of the Residential Development Permit and Design Guidelines. An e-mail confirming these deadlines was sent to the appellant, Pamela Mason, in response to her enquiry about appeal procedures, received on May 14, 2015 (Attachment 4). These deadlines were also relayed verbally to the project applicant, Caerus Ventures, LLC.

On May 27, 2015, two letters of appeal (Attachment 1) together with the required fee, were submitted to the Clerk of the Board and Planning Department, one by Pamela Mason on behalf of herself and neighbors Melissa Burke and Cyd Rawls, and the other by Matthew W. Eaton on behalf of the applicant, Cearus Ventures, LLC. Both appeals concerned the approval of the Residential Development Permit and Design Guidelines. No appeal of the approval of the Tentative Map was filed by either party.

This item therefore concerns two separate appeals of the Planning Commission's decision to approve the Residential Development Permit and Design Guidelines contained within Application 141007. Per County Code Section 18.10.340, your Board must now determine whether to accept jurisdiction or to allow the Planning Commission decision to stand.

In deciding whether to take jurisdiction of an appeal and grant further review, your Board must evaluate the information and be convinced that:

1. There was an error or abuse of discretion on the part of the Planning Commission, Zoning Administrator, or other officer; or
2. There was a lack of a fair and impartial hearing; or
3. The decision appealed from is not supported by the facts presented and considered at the time the decision appealed from was made; or
4. There is significant new evidence relevant to the decision which could not have been presented at the time the decision appealed from was made; or
5. There is either error, abuse of discretion, or some other factor which renders the act done or determination made unjustified or inappropriate to the extent that a further hearing before the Board is necessary.

If your Board finds, at the conclusion of this hearing, that sufficient grounds have been established for the Board to take jurisdiction, your Board may grant a hearing limited to the record of the entire proceedings or alternatively, may decide to conduct the proceedings de novo, as if no other hearing had been held.

In appropriate circumstances, without taking jurisdiction of the appeal, your Board may refer the matter back to the Planning Commission for reconsideration of new evidence or other considerations. In the event of such a referral, your Board may either require a report back to the Board for review and decision by the Board, or may provide that a Planning

Commission decision on reconsideration shall be final, although that decision is subject to further appeal to the Board as in the case of an original decision.

If your Board does not find sufficient grounds to take jurisdiction, or to refer the matter back to the Planning Commission, your Board should decline to schedule a hearing and the Planning Commission decision becomes final.

### **Project Setting**

The project site is located within the Urban Services Line on the eastern side of Winkle Avenue, opposite the intersection with Sequoia Drive and about 1100 feet north of Soquel Drive. The overall character of the immediately surrounding area is varied. Along Winkle Avenue and Sequoia Drive adjacent to the project site many of the existing homes are single-story, ranch style houses developed in the 1950s with a few newer or remodeled structures and occasional two story elements. However, immediately adjacent to the side and rear of the subject property there are newer two-story homes and also townhouses that are accessed from neighboring streets, developed in the 1980s. In addition, several of the lots that front onto Winkle Avenue, including the lots that lie to the north of the existing parcel, are relatively narrow and deep and each parcel includes two single-family dwellings with second single-family homes set behind the homes that front onto Winkle Avenue. Further, to the south of the project site there is also a parcel developed in a "flag lot" configuration, with a rear dwelling unit on its own parcel located behind the home that fronts onto Winkle Avenue. These rear homes are all accessed by a driveway or flag-corridor access from Winkle Avenue.

### **Background**

Application 141007 was submitted on January 30, 2014, as a proposal to divide an existing 31,942 square foot parcel to create four single-family parcels, three of which included attached ADUs located at the second floor above attached garages. During the intake of the application it was noted that the applicant had not yet held a pre-application neighborhood meeting. However, a meeting was scheduled for February 24, 2014 and so the application was taken in with a requirement that the results of the neighborhood meeting be submitted before the project could move forward (Attachment 8). At the meeting the initial proposal for a four unit development was presented, three of which included ADUs at the second floor above attached garages (Attachment 9).

During the review of this application by planning staff, based upon concerns about access, parking and visual impact of the proposed development, the project was revised to reduce the number of parcels to a maximum of three lots, each with a single family dwelling and an ADU. The design of the project was also revised to break up the massing of the proposed development, by detaching the garages with ADUs above, which created a cluster of smaller structures that were considered to be more compatible with the scale of existing developments in the neighborhood.

This revised proposal was presented to the Planning Commission at a public hearing that was held on October 22, 2014 (for the staff report see Attachment 2). At that hearing

concerns were expressed by neighbors that the proposed development was incompatible with the perceived rural character of the neighborhood and with the mostly single-story homes that are developed along Winkle Avenue. In particular there were concerns about impact of the proposed development on the adjoining parcels to the north, and about the appearance of the north-facing, rear elevations of the new homes on parcels two and three.

As a result of these public concerns, the Planning Commission determined that, although the project was in compliance with the general intent and purposes of the General Plan and zoning ordinance, the overall design of the project should be modified in order to reduce the impacts of the development on the surrounding area and to better address the concerns of the neighbors. A motion was therefore passed to continue the public hearing on the proposed project to a future date so that the applicant would have the ability to revise the design of the project (Attachment 4).

Following the hearing the applicant worked with Planning Department staff to revise the project and to address the concerns that had been raised. During this period several versions of revised projects were submitted to the Planning Department for review. One included a layout with attached ADUs at the second floor above attached garages, but this resulted in three large structures that were out of scale with the surrounding neighborhood. Another version was a layout with attached at-grade ADUs, but this resulted in a significant increase in impervious surface and parcel coverage, and also reduced the amount of available parking, landscaping and open space.

The third version of the revised project, which was accepted by staff and the subject of the Planning Commission public hearing held on May 13, 2015, included an attached at-grade ADU on parcel 1 (which relates mostly to Winkle Avenue), and detached garages with ADUs above on parcels 2 and 3, where the development relates mostly to two story homes and townhouses located to the south and east of the project site. In addition, significant revisions to the designs of the proposed dwellings and ADUs were made to reduce the impacts of all of the proposed second story elements of the proposed development on the surrounding area. A complete discussion of the revisions to the project that was presented at the public hearing is included in the letter from staff to the Planning Commission dated May 8, 2015 (see Attachment 3).

At that second public hearing for the project, held on May 13, 2015, the Planning Commission approved Application 141007 subject to the addition of a condition of approval that one of the ADUs on either parcels 2 or 3 be relocated to be on grade.

### **Discussion of Reasons for the Appeals**

As detailed above, two separate appeals of Application 141007 have been submitted: one from neighbors of the project and one from the applicant. In these letters, several reasons have been presented to support a determination that the Board should take jurisdiction of this appeal. The reasons for the appeal of the approval of the Residential Development Permit and Design Guidelines associated with Application 141007, and information from staff related to these reasons, are summarized below for each of the two letters of appeal:

Letter from neighbors (Pamela Mason, Melissa Burke and Cyd Rawls) dated May 26, 2015

1. Initial Public Meeting Prior to Application Submittal. The neighbors state that several people were unable to attend the neighborhood meeting because of the time and location that it was held, which they believe "wasn't in our neighborhood". They assert that no ADUs were mentioned during the neighborhood meeting, and that neighbors voiced concerns about density, traffic, parking and shading at the meeting.

*Staff response:* The meeting was held at 7:00 PM at the offices of the project engineer located at 5200 Soquel Avenue, which is about 1.5 miles by road from the project site, a driving time of approximately 5 minutes. Plans presented at that meeting showed a Minor Land Division to create four lots and the preliminary design plans for the proposed dwellings included attached garages with ADUs above on three of the four lots.

2. Revised project presented at the October 2014 Planning Commission public hearing. The neighbors state that they were confused and felt blind-sided by the new plans presented at the first Planning Commission public hearing held on October 22, 2014, because the project was entirely different - 6 dwellings instead of 4 - "even more dense than the initial concept" presented at the neighborhood meeting.

*Staff response:* Revisions were made by the applicants after the project was submitted to the County, due to staff concerns about impacts of the project as initially submitted. This resulted in a reduction in the proposed density of the development from four lots to three and also design changes intended to break up the size and mass of proposed homes and provide greater compatibility with the surrounding neighborhoods. Plans for the proposed revised development were available for viewing at the Planning Department prior to the advertised public hearing. A revised project description was also posted on the site August 14, 2014, in accordance with the requirements for neighborhood notification set out in County Code section 18.10.224.

3. Lack of fair and impartial hearing at May 2015 Planning Commission public hearing. The neighbors believe that the public hearing favored the applicant because the individual time allowed for members of the public and neighbors to speak was limited to only two minutes each, whereas the applicant's time was not limited. These appellants state that they had planned longer presentations, because they believe they had been allowed unlimited time at the October 2014 hearing, and therefore it was difficult to regroup and effectively articulate information to the Commission, and they were not allowed to fully voice concerns and submit evidence.

*Staff response:* Planning Commission bylaws state that the Commission may establish reasonable limits on the amount of time allotted to each speaker and also on the total amount of time allotted on a particular item. It is further set out that the applicant may be given a time of around 10 minutes to present justification for a proposal and other pertinent information, and that members of the public are generally given 5 minutes, individually or 10 minutes for persons representing a group. The applicant may also rebut arguments presented by the public and is generally given an additional 5 minutes for this.

At the public hearing on October 22, 2014 a total of seven neighbors were given up to around 5 minutes each to speak on the project, resulting in testimony that lasted around 25 minutes. The applicant, represented by the project architect, John Worden, and the project civil engineer, David Ramsey, spoke for a combined period of around eight minutes and also spoke for an additional 7 minutes as a rebuttal to public comments, a total time of fifteen minutes. At the public hearing on May 13, 2015, possibly because this was the second hearing on this project, where many of the same neighbors were present, and also possibly due to the total number of persons present who wished to speak, the Commission chairperson decided to give each member of the public two minutes to speak, although several spoke for longer. At this second hearing a total of nine members of the public addressed the Commission, five in opposition, one of whom was given additional time because she also spoke on behalf of her husband who was not present, and four voicing support. Public testimony again lasted approximately 25 minutes. At this second hearing the applicant spoke for a combined period of about 6 minutes with an additional rebuttal that followed lengthy discussions by the Commissioners, for two minutes, a total time of 8 minutes by the applicant.

4. The project considered on May 13, 2015 did not properly address Planning Commission concerns. The neighbors state that there were minimal changes from the initial proposal considered by the Planning Commission in October 2014, and that the Commission's concerns about density, scale, number of ADUs, parking and compatibility with the neighborhood were not adequately addressed. Also, no traffic analysis was presented. They also quote Commissioner Guth as saying that the revised project was "not in line with the General Plan" or "in the spirit of the R-1-6 development" and that it is a "private Townhouse development with a private road".

*Staff response:* On October 22, 2014 the Planning Commission approved a motion to continue Application 141007 to allow the applicant to consider revisions to the proposed project that would address the concerns raised during that hearing. Submittal of a traffic analysis was not requested. The revised project conforms to the low end of the density range allowed by the General Plan and well-exceeds the 6,000 square foot minimum lot size requirements set out in the zoning ordinance (9,053, 8111 and 9,126 square feet of net developable area respectively). The project proposes development of three single-family homes, each with an ADU, and is not a "townhouse development". ADUs are a single-family accessory use and are not counted toward density. They are specifically allowed by the zoning ordinance within all residential zone districts subject to identified development standards. The existing County Code allows development of ADUs with a building permit only, except that if ADUs are located on a second story or are over 17 feet tall, a discretionary Residential Development Permit is required, which is usually considered by the Zoning Administrator at a public hearing. Because the subject project also includes a Tentative Map, which is considered by the Planning Commission, both entitlements have been considered by the Planning Commission for this project.

As proposed, each of the three parcels include a greater number of required on-site parking spaces than the four spaces that are required under County Code section 13.10.552(A). Parcel one, that fronts onto Winkle Avenue, includes five off-street spaces