

Planning-Commission - PLN2014-00409 Appeal

From: tony Maguire <magreillyus@yahoo.com>
To: "planning-commission@smcgov.org" <planning-commission@smcgov.org>
Date: 8/24/2015 3:30 PM
Subject: PLN2014-00409 Appeal
Attachments: PLN2014-00409 Appeal.pdf

To whom it concerns:

Please see attached appeal letter.

Thank you
Tony Maguire

planning-commission@smcgov.org

Subject:

PLN2014-00409 Appeal of the approval by the Bayside Design Review Officer – August 26, 2015 (APN 057-031-210) 2029 Cordilleras Rd.

Members of the Planning Commission:

My name is Tony Maguire. I reside at 2030 Cordilleras Rd in our family home.

On May 04, 2015, my neighbors Peter Ingram and Seth Thompson filed an appeal of the approval by the Bayside Design Review Officer as described in the County's letter to the applicant dated April 20, 2015.

Please reverse the Design Review Officer's previous action – approval and Grading permit approval or refer the item back to the Community Development Director.

We've been concerned about the impacts to the neighborhood that would result from this project being built as proposed, and have followed the County's review and approval process. Our concerns about the impacts of the project are the same as Seth and Peter's:

- **Proposed tree removal is excessive and avoidable.** We cannot understand why the County would accept a developer's word that mature Oak trees will survive the type of severe grading proposed when the excavations will be inches and a few feet away from the tree trunks.
- **The privacy of neighboring houses and outdoor living areas has not been protected enough.** This is a quiet, low-density neighborhood and building new homes requires sensitivity to existing residents and their living spaces. The County's guidelines and regulations suggest that this is important, but this decision says something completely different.
- **The natural topography of the property will be severely altered, and the grading is extreme,** given the steepness and narrowness of the lot. There are appropriate ways to treat wooded lands near creeks that will allow new homes to be built while retaining habitat and the character of this place. The plans for this project need to be re-thought.

In addition, we are greatly concerned with the lack of review regarding the hillside hydrology. It stands to reason the project would increase surface water runoff during our rainy season and reduce the amount of ground water storage the creek relies on during the dry season.

According to the County, *"When development is within 100-feet from a mapped creek bank in bayside communities, the County requires additional review for potential impacts. The subject parcel is more than 150 feet from Cordilleras Creek and on the north side (opposite side) of Cordilleras Road."* To our knowledge, no such additional review has occurred. Note that this project is approximately 40-feet from top of bank and roughly 30 feet from the nearest storm water culvert which leads directly to the creek. Erosion is already an ongoing issue and we

anticipate this project may enhance the erosion. Therefore, we request that the County fulfill their obligation and conduct the additional review to determine this potential impact.

Please send this proposed project back to the developer for more work and a better approach for this challenging site. Let's get it right so that current and future homeowners can all enjoy their properties and the unique Cordilleras Road environment.

Thank you,
Tony Maguire

Planning-Commission - New Letter from Appellants' Legal Counsel -- 2029 Cordilleras Road, August 26th hearing, Item no. 2

From: Camas Steinmetz <csteinmetz@adcl.com>
To: "planning-commission@smcgov.org" <planning-commission@smcgov.org>
Date: 8/21/2015 3:33 PM
Subject: New Letter from Appellants' Legal Counsel -- 2029 Cordilleras Road, August 26th hearing, Item no. 2
CC: Peter Ingram <peter_ingram@earthlink.net>, Seth Thompson <thompson.seth8...>
Attachments: Ltr from Appellant's Attorney -2029 Cordilleras Road 8.26.15 hearing, Item no. 2 (00135560xD1701).pdf; Exhibit 1 - Arborist Peer Review letter (00135561xD1701).pdf

Dear Chair and Members of the Planning Commission:

On behalf of the appellants of the above referenced matter, please review and consider the attached letter and referenced exhibit prior to making your determination at the August 26th hearing. Note that while we appreciate the recent modifications the applicant has offered to make, which we just learned of today in reviewing the staff report, additional modifications set forth in the attached letter are necessary to bring the project into compliance with the Emerald Lake Hills Design Review Standards. We respectfully urge you to impose these requested modifications as additional conditions of approval. For purposes of clarification, please also note that the staff report incorrectly references the Design Review hearing date – it was April 7th, not April 1st (and therefore, my prior April 6th letter attached to the appeal was submitted the day before the hearing, not 5 days following the hearing).

Regards,
Camas Steinmetz

Camas J. Steinmetz
Aaronson, Dickerson, Cohn & Lanzone
1001 Laurel Street, Suite A
San Carlos, CA 94070
Email: csteinmetz@adcl.com
Direct: (650) 453-3905
Website: www.adcl.com

ROBERT J. LANZONE
JEAN B. SAVAREE
GREGORY J. RUBENS
CAMAS J. STEINMETZ

KAI RUESS
KIMBERLY L. CHU

CAMAS J. STEINMETZ, Ext. 225
Email: csteinmetz@adcl.com

LAW OFFICES

AARONSON, DICKERSON, COHN & LANZONE

A PROFESSIONAL CORPORATION
1001 LAUREL STREET, SUITE A
SAN CARLOS, CALIFORNIA 94070
PHONE: 650-593-3117
FAX: 650-453-3911
www.adcl.com

MICHAEL AARONSON
(1910-1998)
KENNETH M. DICKERSON
(1926-2008)
MELVIN E. COHN
(1917-2014)

August 19, 2015

Planning Commission
San Mateo County
planning-commission@smcgov.org

**Re: Appeal of Design Review Permit and Grading Permit approval -- PLN2014-00409 (APN 057-031-210) 2029 Cordilleras Rd.
Agenda No. 2 of Planning Commission Meeting No. 1602, August 26, 2015**

Dear Chair and Members of the Planning Commission:

This law firm represents Peter Ingram, who, along with his neighbor Seth Thompson, filed an appeal of the above referenced approvals for construction of a home on a steeply sloped, vacant, wooded lot located at 2029 Cordilleras Road. The subject property is situated immediately between Mr. Ingram's and Mr. Thompson's respective residences located at 2039 Cordilleras Road and 2027 Cordilleras Road. As detailed in my April 6, 2015 letter to the Design Review Officer (included in the 08-26-15 staff report), which apparently was disregarded by the Design Review Officer in making her determination, and as discussed further below, the project as approved does not comply with the mandatory Design Review Standards for the Emerald Lake Hills area set forth in Section 6565.15 of the San Mateo County Zoning Regulations ("Emerald Lake Hills Design Standards"). Therefore, we respectfully request that the Planning Commission grant the appeal and either (1) reverse approval of the Design Review Permit and Grading Permit; or (2) impose the conditions set forth below in order to bring the project into compliance with the Emerald Lake Hills Design Standards.

Section 6565.10A requires the applicant bear the burden of demonstrating that the design of their project complies with the applicable Design Review Standards. As detailed in my April 7, 2015 letter, the applicant has failed to meet this burden. Namely, there is no evidence in the record that the project: (1) minimizes tree removal as much as possible; (2) respects privacy of neighboring houses and outdoor living areas as much as possible; and (3) minimizes alteration of natural topography. Therefore, pursuant to Section 6565.10B, the Design Review Officer did not have the basis to make the required findings of approval and should have either denied the requested permit or imposed the conditions suggested below to ensure that these standards were met.

Please note that my clients do not oppose building on this parcel as a matter of principle,

however they do oppose building on the lot in violation of the Design Review Standards which were enacted to protect the visual character and natural resources of their neighborhood as well as the physical stability and economic value of their residences. After attempting to negotiate with the applicant to resolve this incompliance to no avail, Mr. Ingram and Mr. Thompson had no choice but to file and pursue this appeal to enforce the Emerald Lake Hills Design Standards and prevent the project's resulting negative impacts on both of their families and their properties. Conversely, the Design Review Officer's treatment of – and our experience with – the applicant for 2041 Cordilleras Rd. (on the opposite side of Mr. Ingram's residence) resulted in substantially more and better design information and a willingness by the architect and the owner to engage in discussions with neighbors to address key issues and arrive at reasonable compromises acceptable to all parties. No appeal was filed for that project, as unfortunately was the case here.

A. Conditions Must be Imposed to Comply with Tree Removal Design Review Standard

The applicant has failed to meet the burden of demonstrating that the proposed new building is sited such that it will minimize tree removal as much as possible in accordance with Section 6565.15A(1). Of the nine existing significant indigenous trees on the site, the applicant proposes to remove four at the outset, and -- as evidenced in the June 15, 2015 HortScience peer review letter that my client commissioned, attached as Exhibit 1 -- the project will significantly damage the remaining five by deep excavations within inches of the tree trunks so that ultimate death and removal of these trees is a near certainty. Three 50 to 80-year Coast Live Oaks along the west side that the applicant purports to "save" will have little to no chance of survival given the high likelihood that major structural roots will be severed during grading and excavation which is proposed within just inches of each and every root zone of these trees. Likewise for two large Buckeye trees on the western edge of the lot.

As a result, 100% of the existing significant indigenous trees will ultimately be lost. The applicant has not demonstrated that this tree loss could not be avoided by altering his site plan. Condition of Approval No. 3 (Design Review Officer letter to the applicant dated April 20, 2015) offers no further assurances. It simply provides the County and the applicant a convenient escape route from standing accountable at a later date for the demise of any or all of the "saved" trees by essentially stating: *'If subsequent removal is required, just apply for a tree removal permit'*.

To minimize tree removal as much as possible in compliance with Section 6565.15A(1), and to ensure the survival of the remaining trees the following design modifications should be required as conditions of approval:

1. Eliminate east, middle retaining wall outside of the building footprint to ensure preservation of existing trees #4 and 5, as shown on Exhibit 1.

2. Narrow the house footprint and reduce or realign all retaining walls to ensure that no excavation at any time occurs within 10 ft. from center of trunks of Oak trees #6, 8 and 10 on west side.
3. Replace all significant indigenous trees to be removed at a 3:1 ratio with minimum 15-gallon size indigenous trees in compliance with the County's Tree Preservation Ordinance. This translates into 12 new min. 15-gallon trees to replace the four significant indigenous trees apparently proposed for removal (#2, 3, 7 and 9 as shown on Exhibit 1). Mr. Ingram and Mr. Thompson would be willing to work with the applicant to facilitate off-site tree plantings as needed to satisfy the required 3:1 ratio.
4. All remaining trees to be preserved, protected and pruned by a certified arborist, per recommendations in the HortScience peer review letter attached as Exhibit 1.

B. Conditions Must be Imposed to Comply with Privacy Design Review Standard.

The applicant has failed to meet the burden of demonstrating that the proposed new building is sited such that it will respect the privacy of neighboring houses and outdoor living areas as much as possible in accordance with Section 6565.15A(3). Due to the design approach that the applicant has taken on a very restricted building site, the most active living areas of the proposed home will directly and severely violate the privacy of both neighboring homes and their outdoor living areas.

In an earlier submittal of site plans dated 12-23-14, the applicant kept the main floor elevation "tucked" into the site, thereby mitigating the impacts of direct sight lines and sound lines into adjacent properties. However, the current plan indicates that the first floor elevation has risen by 1 foot and the second floor elevation has risen by 2 feet. This increase in floor elevation results in direct sight lines over the top of Mr. Ingram's existing 10-foot tall privacy screen that will penetrate into both indoor and outdoor living spaces at Mr. Ingram's residence. On the eastern side, the sheer physical proximity to the home at 2027 – and its entry stairs – will create an unacceptable tunnel of privacy violation, and no mitigating measures or features are proposed. In sum, there is a total lack of sensitivity to adjacent living spaces and their long-standing uses, and there is no recognition in the application of the context of the site plan.

To minimize the violation of privacy as much as possible in accordance with Section 6565.15A(3), and to ensure the compatible enjoyment of all three properties, the following design modifications should be required as conditions of approval:

1. Lower floor elevations and total height by at least two feet (per original 12-23-14 plans) to reduce direct sightlines from and into interior and outdoor living areas of adjacent homes.

2. Center the house on the lot to allow equal setback space (10 ft.) on east and west sides to accommodate increased screen plantings and/or 3:1 tree planting replacement ratio (discussed above).
3. Install solid 6 ft. fencing at the property line, on both sides of the project.
4. Modify east and west facade windows to reduce direct sightlines from and into interior spaces.

C. Conditions Must be Imposed to Comply with Natural Topography Design Review Standard.

The applicant has failed to meet the burden of demonstrating that the proposed new building is sited such that it will minimize alteration of the natural topography as much as possible in accordance with Section 6565.15A(2). The applicant had proposed to grade nearly 100% of the entire surface area of the parcel. And nearly 65% of the surface will be radically excavated (nearly 650 cubic yards to be cut and removed) for the construction of the proposed structure and its retaining walls. Condition of Approval No. 8 in the Bayside Design Review Officer's letter to the applicant dated April 20, 2015 stipulates that "The grading plan shall be revised to remove grading in the rear portion of the parcel behind the proposed residence, except to create a swale to assist with on-site water retention, near the rear retaining wall." However, this condition does not limit the scope of site disturbance and grading in a clear way, and it introduces "on-site water retention" at the upper edge of significant grading. None of the applicants' plans or reports describe on-site retention and how such a feature will ensure adequate drainage of the project site and protection of adjacent properties from damage or degradation due to changes in the exiting drainage patterns of the hillside.

The proposed retaining walls will essentially act as dams for both surface and sub-surface run-off, increasing and intensifying diversion of flows onto both adjacent properties. There would be much less environmental impact – and less alteration to the natural topography – if the upper portion of the lot were required to be left as-is, and drainage was properly designed within the up-hill footings of the retaining walls. The County has failed to validate that the proposed drainage plan as conditioned for approval will protect all three properties from damage by storm water run-off and subsurface flows. It is an unacceptable risk to simply leave this issue unresolved at the point of approving a grading plan.

To minimize alteration to the natural topography as much as possible and to ensure the stability of the adjacent properties, these design solutions should be required as conditions of approval:

1. Narrow upper retaining wall width such that it is within the 10 ft. set back from east and west property lines.

2. Omit upper concrete swale and significantly increase drainage capacity behind [upper] major structural retaining wall to address drainage concerns – including at base of existing sinkhole.
3. Prohibit grading, planting or construction disturbance of any kind on existing grades and flora up-hill from the upper retaining wall.
4. Require that the applicant confirm the construction method for the structural retaining walls, including average dimensions of over-excavation required for this site, and provision of increased drainage capacity behind upper retaining wall.

In conclusion, we respectfully ask you to uphold the integrity of the Emerald Lake Hills Design Review Standards by granting the appeal and either (1) reversing approval of the Design Review Permit and Grading Permit; or (2) imposing the above listed conditions on these approvals to bring the project into compliance with the Emerald Lake Hills Design Standards.

Very truly yours,



Camas J. Steinmetz

Cc: Tim Fox, Deputy County Counsel
Steve Monowitz, Community Development Director
Erica Adams, Design Review Officer

Enclosure: June 15, 2015 HortScience peer review letter to Peter Ingram

Exhibit 1

June 15, 2015

Peter Ingram
2039 Cordilleras Rd.
Emerald Hills, CA



Subject: Peer Review of Arborist Report for Neighboring Lot

Dear Mr. Ingram:

The owner of the lot immediately east of your property is planning to construct a new home. There are several mature oaks on the property. Kevin Keilty, Keilty Arborist Services prepared a report that provided an inventory of the trees and recommendations for their protection during construction (report dated Feb. 3, 2015). You asked that I prepare a peer review of that report.

On May 8 you and I met at the site to discuss the proposed home layout and to view the potentially affected trees near your property line. At that time you gave me a copy of Mr. Keilty's report. I did not have access to the plans for the construction on the lot, although the tree location map included in Mr. Keilty's report showed the proposed footprint (scanned copy attached). In addition I reviewed the annotated building elevations and site plan included in the Camas Steinmetz's (Aaronson, Dickerson, Cohn & Lanzone) letter of April 6, 2015.

The arborist report described 11 trees, and included measurements, rating for condition, and comments for each. Mr. Keilty recommended removing two trees because of poor condition. He provided a Tree Protection Plan (text) that established tree protection zones as close to the dripline as possible, specified hand digging around roots during excavation, described how to cut roots, and required observation of root cutting and preparation of mitigation measures to compensate for root removal. He also briefly discussed tree pruning, as well as irrigation needs during construction.

San Mateo County Tree Preservation Requirements

The Significant Tree Ordinance of San Mateo County Section 12,012.1

(http://www.co.sanmateo.ca.us/vgn/images/portal/cit_609/43/13/390508716significant%20tree%20ordinance.pdf) defines significant trees as, "... all trees in excess of 19" in circumference [6" diameter]." By this definition, all of the trees except #1 are *Significant Trees* and require a permit to be removed.

The arborist report does not state which trees will be removed for construction so it is not clear which trees require a tree removal permit. From the plotting of the trees on the tree location map in the report, it appears that trees #2 (23.9" diameter coast live oak), #3 (7.2-9.1" diameter buckeye) and #9 (24.5" diameter coast live oak) are within the building envelop and therefore will be removed. He does recommend removing oak #9 because of the decay present at the base of the tree. He also recommends removing oak #7 (12.8" diameter oak) because it is leaning into and being supported by oak #6 (17.8" diameter oak). I agree with his recommendation to remove #7 and #9.

Trees #4, 5, 6, 7, 8, and 10 are very close to the structure and deep excavation for retaining walls. The arborist report does not describe the effects this construction will have on the trees, nor does he discuss if the trees are likely to survive.

Mr. Keilty stated, "Tree protection zones should be established and maintained throughout the entire length of the project... The location for the protection fencing should be as close to the dripline as possible still allowing room for construction to safely continue."

Although tree driplines were not plotted on the tree location map, my observations at the site were that the planned construction is far within the dripline, and therefore is inconsistent with Mr. Keilty's recommendations for the tree protection zone to be near the dripline. I do not think oaks #4-10 are likely to survive the impacts of the planned construction.

The Significant Tree Ordinance of San Mateo County Section 12,020.2 states that, "A permit shall be required in the RH/DR district for the trimming of significant indigenous trees where the cut results in the removal of a branch or cutting of the trunk which is 19 inches or greater in circumference at the point of the cut."

The arborist report did not describe what pruning will be required to provide clearance for construction, although he did state that, "trimming of the trees to be retained will be minor with no significant impacts expected." Because construction is shown close to tree trunks and far within the tree driplines, I question whether that statement is accurate.

I think a more comprehensive assessment of pruning for clearance is needed. I think pruning to remove most of the canopy on the west side of trees #6-10 and the east side of trees #4-5 would occur to clear the structure. It is likely that branches larger than 19" in circumference would be removed. Therefore, application for permit would be required. In some cases required pruning may be so severe that removal of the tree may be necessary.


Recommendations

I agree with Mr. Keilty that removal of trees #7 and 9 is justified because of their poor structural condition. I think it will also be necessary to remove *Significant* trees #4, 5, 6, 8, and 10 because of severe impacts to roots and tree crowns when the soil adjacent to the trunks is excavated and the retaining walls and structures are built.

Preservation of *Significant* trees, especially those near your property line, is important to you, and is supported by the Significant Tree Ordinance of San Mateo County. With some plan modification, retention of trees #6, 8 and 10 should be possible. Following are the actions I recommend:

1. Adjust the project plans to maintain existing grade, without excavation, within a minimum of 10' of trees #6, 8, 10, and 11.
2. Stake the east edge of the excavation required to construct the house, retaining walls, and any other excavation such as trenching for utilities what will occur within tree driplines plus 10' beyond so that impacts to trees can be assessed and likelihood for survival estimated.
3. Install story poles to represent the finish height of structures so the requirements for pruning to provide vertical clearance can be accurately assessed.
4. Any tree pruning should be accomplished by a qualified Certified Arborist acceptable to you and should adhere to specifications you provide.

- The Significant Tree Ordinance of San Mateo County Section 12,021, Permit Applications requires a description of tree planting or replacement program, including detailed plans for an irrigation program, if required. I suggest planting some of those trees along your common property line to partially compensate for loss of screening.



Nelda Matheny
Board Certified Master Arborist #WE-0195B

Scanned image of the tree location map
included in Keilty Arborist Services
report, Feb. 3, 2015.

