

**FINAL MINUTES  
REGULAR PLANNING COMMISSION MEETING  
JUNE 9, 2009  
CORTE MADERA TOWN HALL  
CORTE MADERA**

**COMMISSIONERS**

**PRESENT:** Chairman Bruce Mace  
Commissioner Patrick Pagnillo  
Commissioner Peter Schwartz  
Commissioner Sloan Bailey  
Commissioner Richard Esteb

**STAFF  
PRESENT:** Bob Pendoley, Planning Director  
Larisa Roznowski, Associate Planner  
Nancy Salcedo, Minute Recorder

**1. OPENING**

**A. Call to Order**

**B. Pledge of Allegiance**

**C. Roll Call**

All the Commissioners were present.

**2. PUBLIC COMMENT:** None

**3. CONSENT CALENDAR:** None

**4. CONTINUED HEARINGS:** None

**5. NEW HEARINGS**

- A. 501 CORTE MADERA AVENUE, DESIGN REVIEW APPLICATION NO. 08-008, TED CHRISTENSEN AND MICHELLE SLADE (OWNERS) - To construct a 4,961 Gross Floor Area (GFA) new residence. (Zoning: R-1-A Low Density Residential District) (Planner: Larisa Roznowski)**

Commissioner Bailey recused himself. He said that he and an attorney who will be making a presentation represent clients who have adverse interests in his private practice. Therefore, in order to avoid any appearance of impropriety, and to avoid any prejudice to anybody, he is recusing himself.

Commissioner Esteb recused himself. He said that the applicant contacted him last week about architectural services. He said that has no contract or financial agreement at this point, but to make sure that there is no impropriety, he does not want to be a part of this discussion or vote on this item, and is therefore recusing himself.

Associate Planner Roznowski presented the staff report for which she used a slide presentation. She explained that the applicant is requesting Design Review approval to construct a 4,961 Gross Floor Area (GFA) new residence including a 618 GFA two-car garage on net lot area of 58,084 sq. ft. where the governing R-1-A Low-Density Residential zoning requires a minimum lot area of 20,000 sq. ft. The net lot area is exclusive of the two detention basins north of the proposed residence and the private driveway access easement at the south of the proposed residence.

She explained that neighbors sharing the access easement have expressed concern regarding enforcement of repairing any damages to the easement as a result of the proposed construction. The Town is limited in its authority in that it is not a party to the Road Maintenance Agreement, which was required as a Condition of Approval for the original tentative map for 501 Corte Madera Avenue. Staff recommends that for this Design Review application, a Condition of Approval be added which states, "prior to issuance of a Building Permit, the applicant is required to submit a copy of the Road Maintenance Agreement for the subject property".

The lot is steeply sloping downward towards Corte Madera Avenue to the north and east. The proposed residence either meets or exceeds all required setbacks. The proposed lot coverage is 5.0% where 25% is the maximum allowed. The proposed Floor Area Ratio (FAR) is 8.5% where 40% is the maximum allowed. The maximum height of the house is 27'-2" above finished grade where 30' is the maximum allowed.

There are the two concrete detention basins on-site that are approximately 100 years old, and constructed as part of a private water supply company that has not been in operation for many decades. The applicant submitted hydrology and geotechnical studies, which evaluate the impact of the proposed development. The geotechnical report concluded that the project would have no physical effect on the detention basins.

The property's storm water discharge system is currently routed into an existing concrete box below the eastern lower detention basin and into pipes within a 4 ft. wide easement northeast of the property which connects to Town's storm drainage system on Corte Madera Avenue. The existing pipes within the easement will be upgraded to accommodate the site's runoff. Currently, the basins hold water all year long and do not drain, except in overflow conditions. The applicant proposes to install a 6" drainpipe through a bored hole at the bottom of each detention basin along with a debris

catchment structure. The applicant's engineer has estimated that with this improvement the basins will drain in up to a two-year storm event. In a more intense storm, water will be retained temporarily, and will eventually drain to below the two-year retention level. This improvement will decrease the chance of water overtopping the detention basin walls and reduce the amount of water retained within the basins. All of the geotechnical and hydrology reports submitted were professionally prepared and were found to be adequate and complete by the Public Works Department.

The proposed residence is of post-modern design and includes strong geometric lines, extensive use of glass, a combination of stucco and ledgerstone for the exterior finish, and a standing-seam curved metal roof. The surrounding neighborhood has an eclectic array of architectural styles.

The lot is heavily vegetated with more than 283 trees of varying sizes and species primarily to northwest of the proposed residence. Some trees and shrubs in the area of proposed construction were removed in recent years prior to the submittal of the subject Design Review application. The majority of the trees on the property will remain except for several within the building pad area which include a total of 14 trees ranging in size between 4 to 14" inches. One 24"-box California black oak will be planted on the southwestern side of the house, two 24"-box coast live oaks will be planted on the southeastern side of the house, and four 24"-box deodar cedars will be planted along the northern sides of the house.

Associate Planner Roznowski referred to the color elevation where the proposed 2 oaks and 4 deodar cedars are shown at the North Elevation, along with the proposed landscaping in the planter beds and in the stepped keystone planter retaining wall at the base of the building. Staff recommends that the proposed project will not significantly and adversely affect the views, sunlight, or privacy of nearby residences. The large lot area of the subject lot and surrounding adjacent lots, steep topography, and existing and proposed vegetation minimizes any potential impacts to nearby residences.

The closest uphill western neighbor at 503 Corte Madera Avenue will have no impacts to views, sunlight, or privacy because the proposed residence will be sited on the steep slope below it so that views remain unobstructed, and no privacy or sunlight impacts will occur. Any potential privacy impacts to the closest downhill neighboring residence at 425 Corte Madera Avenue will be mitigated by the 162 ft. distance between the two residences and the fact that four 30' tall deodar cedars and two coast live oaks will provide a visual screen to this neighbor's back yard and residence. No significant views will be blocked at 425 Corte Madera Avenue, as views to the bay will remain unobstructed. Sunlight impacts are not considered significant or adverse due to the

large lot areas and large setbacks between the proposed and existing downhill residence at 425 Corte Madera Avenue. The proposed residence will be out of the line of sight from neighbors to the north and south due to steep and varying topography and large setbacks.

The proposed residence will be harmonious with the site because all exterior colors and materials will be earth-toned and will be compatible with the surrounding natural area. An almost black roof color will reduce visibility and will be treated not to rust or age in an unsightly manner. A Condition of Approval has been included that non-reflective tinted glass be utilized for all windows throughout the residence to minimize visibility. The massing of the house steps down the hillside by utilizing a series of decks/patios, the driveway, and stepped retaining walls, which follow the existing topography of the site. The articulated façades of the residence combined with the stepped-back levels and retaining wall planters minimize massing and anchor the house into the hillside. A stepped keystone planter on the northern sides at the base of the building will have planter cells with landscaping planted throughout which will soften the appearance of the retaining wall. The proposed residence will be harmonious, compatible, and in proportion with the surrounding neighborhood, which has a mixture of architectural styles that are in proportion with lot sizes.

The property is also located within the Hillside Land Capacity (HLC) Overlay District, which sets development and density standards. A geologic investigation was required for the proposed project and the report concluded that the building site could be safely graded. The HLC requires that based on the geologic investigation, unstable slopes are to be avoided, and grading and removal of natural vegetation should be minimized. Proposed grading is limited to that necessary to accommodate the building footprint and the driveway. The HLC provides that the allowed density may be reduced to avoid geologic hazards. In this case, the minimum density of one unit is being proposed.

The HLC also states that buildings cannot be located directly on a visible ridge. The proposed residence is not on a ridgeline. Further, the HLC states that a visual analysis may be required for development within the Scenic Resources Overlay District as designated in the General Plan. Views of the proposed residence as seen from Tamalpais Drive and the nearby vicinity were analyzed. While the proposed residence can be seen from near the intersection of Tamalpais Drive and Eastman Avenue, Staff recommends that due to the extensive natural cover on the property that exists and will remain, the visual impact will be minimized.

The HLC also requires fire safety measures developed by a biologist and civil engineer. However, this property is subject to the Wildland-Urban Interface ordinance, which sets stricter and more comprehensive fire protection standards than the HLC. Therefore,

Staff believes that the intent of the fire safety provision of the HLC Overlay District is met by the Wildland-Urban Interface Ordinance. Lastly, the HLC permits one unit on properties with slopes in excess of 30%. Based on this provision, the project complies with the density standard.

In conclusion, Staff believes that the proposed residence is compatible with the intensity of residential development in this neighborhood. Architectural features and new landscaping will complement the site and make the project an attractive addition to the neighborhood. Views, sunlight, and privacy impacts on adjacent neighbors are not significant and adverse because the project is adequately sited away from surrounding structures, and will be screened by proposed landscaping. Staff recommends that as a Condition of Approval, the applicant be required to submit a copy of the Road Maintenance Agreement for the subject property prior to issuance of a Building Permit.

Associate Planner Roznowski concluded that Staff recommends approval of this Design Review application. However, today at 4 pm, a lengthy letter with attachments was submitted on the behalf of the downhill neighbors, the Bensteads at 425 Corte Madera Avenue, with a number of objections for the proposed project. Each Commissioner has been provided with a copy of this packet and additional copies have been made available to the public. Due to the late timing of the submittal of this packet, Staff will not be able to respond to the points made at this time. If the Commission decides that it wants to direct Staff to respond to the comments made, then Staff recommends that the Commission open the public hearing, hear public testimony, comment as appropriate, and continue the hearing to a date certain.

Chairman Mace asked for questions from the Commission.

Commissioner Schwartz acknowledged the lengthy application chronology. He asked whether the access easement met Public Works Department's requirements.

Planning Director Pendoley said the access easement on the subject property had been in place since 1979. He said that providing a copy of the Road Maintenance Agreement should be added as condition of approval.

Commissioner Schwartz asked about the 300-foot radius notice. Associate Planner Roznowski said the item had been noticed as required. Commissioner Schwartz asked whether this was essentially the same design as was proposed in the original submittal last year.

Associate Planner Roznowski said the proposal had not changed substantially. For the most part, only corrections to the plans were made.

Chairman Mace asked for a presentation from the applicant.

Ted Christensen, the owner and applicant said Associate Planner Roznowski had done a good job with the staff report. He confirmed that the original submittal was May, 2008 and that he had worked diligently to address all that has come up in regard to the application. He explained that the proposal was a house for him and his wife, and that he is a General Contractor and builder, and he is more aware than most of the potential issues and that he has tried to be considerate of such. He explained that this is a 3,300 sq. ft. house of habitable area. The plans were purchased from an architect of an existing local house, and he had this architect site the house on this lot. He said he has spent a significant amount of time addressing the retention basins, which he considers the largest issue, in a matter that is acceptable. He said there is no nexus to CEQA. He plans to allow the reservoirs to drain, rendering them less of a concern, and intends to fence and secure them and eventually perhaps fill them in.

Chairman Mace opened the public hearing.

Guy Benstead of 425 Corte Madera Avenue thanked staff for their review, thanked Commission for their time and apologized for late material. He said this is a complex project with many issues that affect them and many neighbors. He said he has had limited contact with the applicant, and that the scope of project is not what was expected. He said he retained counsel to help work through the proposal, as he is not familiar with the building process. He asked for more time to work through understanding the proposal. He said that he brought comments from some of his neighbors to share as he had neighbors sign letter of concern he wished to leave for the Commission.

Leonard Rifkind, a land use attorney speaking on behalf of Guy Benstead, noted that the story poles are up and said that is when neighbors start paying attention. He said that the proposed house is on a platform above natural grade making the top of the roof at effectively 44 feet as viewed from Corte Madera Avenue. He said the hillside has been deforested since the photographs were taken, and that there are 12 or 13 more trees in the building envelope that would be removed. He said there was a lot line adjustment approved in 1985 that listed as a Condition of Approval to retain trees that are now gone.

He asked that the Commission focus on the mandatory findings, adding that a lot more information is needed before approval. He said that to fill in the reservoirs is a great idea, which should be done before construction. Perhaps the house could be re-sited there on top of one of the reservoirs to save some trees. He said that the proposed project has a huge impact on the privacy on 425 Corte Madera Avenue, and that the

access and easements are an open question not yet evaluated. He said there is no utility easement on the title report.

Chairman Mace asked about 1985 documents listed in Mr. Rifkind's letter as attached, but were not attached. Mr. Rifkind said the documents were in his file and that he would be happy to provide them tonight. He concluded that it is the obligation of applicant to discuss construction plans with the neighbor, and that Mr. Christensen had not done this.

Robert Pierce of 507 Corte Madera Avenue said he wanted to talk about maintenance of the easement. He said there are several involved in the agreement, including Mr. Critchfield who is out of town and John Conte who owns the building upslope from the subject lot and they don't know where he is. He said Mr. Critchfield had asked him to represent his interest at this hearing, and that the Town had required Mr. Critchfield to resurface sections of the road as a Condition of Approval. Mr. Pierce said that he and Mr. Critchfield assumed that the Town would also require this of any new construction to impose the same cost upon each. He said that the document meets legal standards to allow the neighbors to rely upon it to settle Road Maintenance issues, yet it does not include much more. He said it does not include his address. He concluded that if Mr. Christensen is required only to sign the Agreement, he is not required to contribute fairly.

Michael Hooper said he is a friend of the Bensteads and a frequent visitor to their property. He said anything that results in a 20'-tall retaining wall is an issue that needs to be looked at. For the building envelope the proposal is too big, too tall and oriented in the wrong direction. He said the slope is too steep to build on without some greater effort. He concluded that if the project were oriented toward street, it would have far less impact on the Benstead's property.

Mr. Benstead clarified that when story poles went up, he came to the Planning Department within a day or two. He imagined staff would contact Mr. Christensen and express his concerns. He argued that he did not first appear at 4 pm today.

Mr. Christensen said that he would not go through every point that Mr. Benstead had made as the Town has reviewed the project. He said that it was nice to hear comments from someone not living near the property and how they don't like what's being built somewhere else. He said that he had approached the neighbors in an attempt to discuss his plans, and that he sat in the Benstead's living room a year and a half ago with the plans. He documented 3 phone calls he had made to the Benstead home where he had left messages and never heard back. He explained that he was not proposing filling the reservoirs now, but to drain them. He acknowledged that the Road

Maintenance Agreement was not in his title report, but that he would be more than happy to enter into any such agreement. He added that any damage done as a result of his construction project would be replaced, and that he would not propose this project if it were not possible to build. He concluded that there are 3 or 4 letters of support for the project.

Commissioner Pagnillo commented on the design, noting that the garage could be located differently so that the driveway would not have to extend over towards the downhill neighbor. He added that from looking at the plans it is hard to get an idea of the impact, adding that the story poles should be added to show the retaining walls and driveway in order to provide a full view of what the proposal looks like from that side. He noted that the long letter from Mr. Rifkind includes many generalities. He said that if the letter were intended as an exchange of information, it would need to contain the actual information, adding, for example, that if there were a neighbor within 300 feet of the subject property who was not noticed by the Town, the Commission would need their name.

Commissioner Schwartz said the design seemed familiar and that he knew the architect's original house. He said that he found the architecture to be extremely attractive. He said there are also outstanding issues to resolve. He said the reservoirs are not a part of the discussions on the proposed building itself, and noted that in their current state, they are more imminently unsafe to the public. He asked from where the building height from grade was determined.

Associate Planner Roznowski referred to Sheet A-1.2 and explained that there is a table on that sheet that lists a number of points between finish grade and ridgeline points, adding that per the current definition of height in the Zoning Ordinance, height is measured from finished grade to the highest point.

Commissioner Schwartz asked about the previous Lot Line Adjustment and the timing of tree removal relative to this project application. Associate Planner Roznowski said that at the time Staff viewed the site following this application, existing stumps appeared not to have been recently cut.

Commissioner Schwartz said he had reviewed Mr. Rifkind's comments, and found that while some were germane, others were not, and added that quite a few points were covered within the Staff's analysis. He noted a potential for light pollution emanating from glass walls, and added that a careful choice of lighting fixtures would help mitigate light pollution to adjacent properties.

Chairman Mace echoed an interest in the trees cut and wondered when they were cut, by whom, and what the sizes were of lost trees as it pertains to the Ordinance. He said written and unwritten agreements as they related to roadway easements are private issues dealt with outside the Commission. He said he understood the comments about the proposal being too big, too tall and oriented wrong. He said it is a very attractive design, but that he has a concern about the proposed elevation and building heights. He said that the reservoirs are not seen as an issue since they would be drained. He noted that the Town has adopted the new General Plan, and that it appeared that some of Mr. Rifkind's comments relate to the obsolete General Plan. He said that Staff has verified that the proposed FAR and square footage tables are accurate, and that deforesting the hillside in the area of the building envelope inevitable. He asked about the proposed cut and fill calculations.

Associate Planner Roznowski referred to the Grading and Drainage Plan and explained that there are 1,961 cubic yards of fill and 661 cubic yards of cut material proposed.

Chairman Mace noted mention in Mr. Rifkind's document of a 50 percent increase in proposed residence size, and confirmed that a 3,300 sq. ft. is proposed, which is basically unchanged from plans submitted originally. He concluded that the Commission needed time to address Mr. Rifkind's 10-page document, and said he felt that the Commission should continue the hearing.

Planning Director Pendoley said the Commission would be wise to continue the hearing to provide an opportunity to put good responses on record. He noted that Mr. Rifkind would like to provide more facts, and said it would be important to set a deadline for receipt of such. He added that Mr. Rifkind referenced grading studies and a reservoirs study done in 1980, and asked that Staff receive a copy of such documents. He added that Staff had addressed day glare by requiring that the project use non-reflective glass, but not nighttime glare. He said that it would be appropriate to request a Lighting Plan to assure that any glare issues are addressed. He confirmed that when the application was originally filed, Staff had made a site assessment within a week or two, and that at that time, the trees were gone and it appeared that they had been for quite some time, though he couldn't say how long. Staff can provide a more detailed report following the initial site visit that was conducted shortly following the submittal of the Design Review application.

Chairman Mace added that he would also like to see the 1985 documents regarding the trees mentioned in Mr. Rifkind's document on page 7 of 10, the last sentence in paragraph 5a.

Commissioner Pagnillo said it might be appropriate to reorient the garage.

Commissioner Schwartz agreed and added that the garage could be moved to the left allowing an opportunity to revise the retaining walls, which could reduce the bulk.

Chairman Mace also agreed that the applicant should explore this because his biggest concern is the massing of the building and the retained areas. He said that anything that can be done to bring down the massing would be a positive move. He said that for him, this includes taking measures to reduce the overall height of the building.

A comment from audience stated that neighbors don't want people backing out into the private roadway easement.

Planning Director Pendoley said a 30-day continuance would provide adequate time for an appropriate response.

**MOTION:** Motioned by Commissioner Schwartz, seconded by Commissioner Pagnillo and approved unanimously to continue the hearing to July 28, 2009, as there would be lack of quorum on July 14, 2009.

## **6. ROUTINE AND OTHER MATTERS**

### **A. REPORTS AND ANNOUNCEMENTS**

**i. Commissioners:** Commissioner Esteb attended the Town Council meeting.

**ii. Director**

**B. MINUTES:** Planning Commission Meeting Minutes of April 28, 2009.  
Motioned, seconded and approved.

**7. ADJOURNMENT:** The meeting was adjourned at 8:55 p.m. The next Planning Commission Regular Meeting is to be June 23, 2009.