

December 15, 2009

Board of Supervisors  
County of Ventura  
800 South Victoria Avenue  
Ventura, CA 93009

**SUBJECT:** Appeal No. AP09-0006 of the Planning Commission's Denial of Variance No. LU09-0041, for a reduction in the front yard setback requirement for the property located at 6768 Breakers Way in the community of Mussel Shoals; APN: 060-0-082-435; District #1 – Supervisor Steve Bennett.

**RECOMMENDED ACTION:**

**DENY** Appeal No. AP09-0006 and **UPHOLD** the Planning Commission's denial of Variance No. LU09-0041.

**FISCAL/MANDATE IMPACT:**

Minimum staff time is involved in the administrative aspect associated with this item at no additional cost to the current budget.

**DISCUSSION:**

On October 11, 2008, the Planning Director approved Planned Development Permit No. LU08-0079, to demolish the existing one-story dwelling on the subject property and construct a new two-story dwelling approximately 2,730 square feet in size. The proposed dwelling was approved with setbacks which complied with the requirements of the Ventura County Coastal Zoning Ordinance (CZO). (See Exhibit 5 - Approved Site/Floor Plan for LU08-0079).

On March 13, 2009, five months after the approval of LU08-0079, the Appellant submitted Variance No. LU09-0041 for a reduction of the front setback requirement in order to allow for an increase in square footage to the previously approved single-family dwelling. The variance sought to reduce the required ten-foot front setback, as set forth in CZO § 8175-2, to a five-foot front setback.

The Planning Commission Staff Report for Variance No. LU09-0041 (Exhibit 1) contains a complete project description and the Appellant's justifications for meeting the required variance standards listed in CZO § 8181-4.2. As described in the Planning Commission



Staff Report, Planning Staff reviewed the Appellant's reasons for a variance (Exhibit 7) and determined that three of the five required variance standards could not be met.

The Appellant is now appealing the Planning Commission's August 20, 2009, denial of Variance No. LU09-0041 to your Board pursuant to CZO § 8181-9.

### **Planning Commission's August 20, 2009 Public Hearing on the Variance**

During the public hearing, Planning Staff explained, and County Counsel confirmed, that in order for the Commission to grant the variance, all six of the variance standards (CZO § 8181-4.2) must be met. Planning Division Staff focused its analysis on those variance standards that the Planning Director determined could not be met by the variance requester. These three standards, as outlined in Exhibit 1, are:

- 8181-4.2(a). There are special circumstances or exceptional characteristics applicable to the subject property with regard to size, shape, topography and location, which do not apply generally to comparable properties in the same vicinity and zone within the coastal zone; and
- 8181-4.2(b). Granting the requested variance will not confer a special privilege inconsistent with the limitations upon other properties in the same vicinity and zone within the coastal zone; and
- 8181-4.2(c). Strict application of the zoning regulations as they apply to the subject property will result in practical difficulties or unnecessary hardships inconsistent with the general purpose of such regulations.

Following Planning Division staff's presentation, the Appellant argued the deficiency of Planning Staff's evidence used to show that variance standards had not been met. The Appellant further argued that:

- The Planning Director's prior approval on October 11, 2008, of a single family dwelling on the subject lot, without a front setback variance, was inadequate justification for denial of the variance;
- The currently approved single family dwelling was not similar in size to other single family dwellings in the area; and
- The variance would compensate for the smaller size of their lot, as compared to the larger lots in their neighborhood.

Although unrelated to the CZO variance standards, the Appellant claimed that the proposed single family dwelling would incorporate many sustainable, energy efficient building features and concepts which would then make this home a model for such development within the County.

Commissioner Aidukas made a motion to support staff's recommendation to deny the variance request and the motion was seconded by Commissioner Onstot. While

deliberating on this item, the Planning Commissioners found that not all of the CZO variance standards could be met. Specifically, the Commission found that:

- No special or exceptional circumstances existed for the subject property, based on the lot and residence sizes in the Mussel Shoals community;
- There was not a major difference between the average Mussel Shoals community lot size of 3,400 square feet and the 3,259 square feet lot size of the subject property; and
- The lot size, shape, and setbacks imposed upon the subject property would not preclude the Appellant from designing a home that could meet the CZO standards.

Therefore, the Planning Commission found, based on the evidence presented in the staff report and at the hearing of August 20, 2009, that the variance standards in CZO § 8181-4.2 are not met and culminated their deliberations with a decision to adopt a resolution to deny the variance request (Exhibit 13 – Planning Commission Resolution).

On a 4-0 vote (Commissioner Wesner absent) the Commission adopted staff's recommended action and denied Variance No. LU09-0041.

**Appeal of the Planning Commission's Decision to the Board of Supervisors (Case No. AP09-0006)**

The Property Owner, now the Appellant, appealed the Planning Commission's August 20, 2009, denial of Variance No. LU09-0041 to your Board pursuant to CZO § 8181-9. The Appellant is requesting your Board to reverse the Planning Commission's decision and approve Variance No. LU09-0041. The grounds of the appeal are attached and summarized below (Exhibit 12 - Appeal Form).

Grounds of Appeal:

The Appellant does not agree with the Planning Commissioner's reasons for denying their variance application. Appellant claims that the Planning Commission and Planning Staff did not specifically address how the Appellant failed to prove the CZO § 8181-4.2 variance standards.

RMA-Planning Response to Grounds of Appeal:

Planning Staff determined that variance standards of CZO § 8181-4.2 (a), (b) and (c), could not be met for the reasons specifically stated in the Planning Commission Staff Report (Exhibit 1 – Planning Commission Staff Report) and as discussed above.

**PUBLIC AND JURISDICTIONAL REVIEW:**

A Notice of this hearing was published in the Ventura County Star and mailed to the Appellant, the Appellant's representative, surrounding property owners within 300 feet of the subject property, and all others who requested notification of public hearings related to this project.

This item has been reviewed by the County Executive Office, the Office of the Auditor Controller, and County Counsel. If you have any questions concerning this item please contact Michelle Glueckert D'Anna, Case Planner, at (805) 654-2685 or via email at michelle.danna@ventura.org, or Kim L. Rodriguez, Planning Division Director, at (805) 654-2481 or via email at Kim.Rodriguez@ventura.org.

A handwritten signature in dark ink, appearing to read "Kim Rodriguez", with a stylized flourish at the end.

KIM L. RODRIGUEZ, DIRECTOR  
PLANNING DIVISION

Attachments:

Exhibits for August 20, 2009 Planning Commission Hearing

- Exhibit 1 – Planning Commission Staff Report, August 20, 2009
- Exhibit 2 – Assessor's Parcel Map
- Exhibit 3 – Location Map
- Exhibit 4 – Site/Floor Plan for LU09-0041
- Exhibit 5 – Approved Site/Floor Plan for LU08-0079
- Exhibit 6 – Aerial Map
- Exhibit 7 – Applicant's Justification for Variance Request
- Exhibit 8 – Draft Planning Commission Resolution
- Exhibit 9 – Submittal by Applicant on August 3, 2009
- Exhibit 10 – Letter from Breakers Way Homeowners Association, dated July 13, 2009
- Exhibit 11 – Staff PowerPoint Presentation

Exhibits Presented at August 20, 2009 Planning Commission Hearing

- Exhibit A – Letter from Steve Bennett
- Exhibit B – Two photographs, submitted by John Turturro
- Exhibit C – Four photographs and Site Plan, submitted by John Turturro
- Exhibit D – Revised Staff Report Table 1, submitted by Larry Graves

Exhibits submitted for December 15, 2009 Board of Supervisors Hearing

- Exhibit 12 – Appeal Form, submitted August 28, 2009
- Exhibit 13 – Signed Planning Commission Resolution