



COUNTY OF HUMBOLDT

For the meeting of: 3/23/2021

File #: 21-363

To: The Humboldt County Board of Supervisors

From: Planning and Building Department

Agenda Section: Public Hearing

SUBJECT:

Gerald McGuire appeal of Planning Commission denial of an after the fact Coastal Development Permit to rebuild a demolished single-family residence.

RECOMMENDATION:

That the Board of Supervisors:

1. Open the public hearing and receive the staff report, testimony by the appellant (applicant), and public;
2. Close the public hearing;
3. Adopt the resolution (Resolution 21-__). (Attachment 1) which does the following:
 - a. Finds that the requirements of the California Environmental Quality Act (CEQA) do not apply pursuant to section 15270 (Projects Which Are Disapproved);
 - b. Finds that the project is not consistent with applicable regulations and would have an adverse effect on the public health, safety and welfare.
 - c. Denies the Appeal submitted by Gerald McGuire;
 - d. Denies the Coastal Development Permit.

SOURCE OF FUNDING:

The Appellant has paid the appeal fee.

DISCUSSION:

Executive Summary

An appeal of the Humboldt County Planning Commission's February 4, 2021 denial of the Gerald McGuire Coastal Development Permit application requesting approval for unpermitted demolition, and after-the-fact permits to construct an existing unpermitted single family residence in the Fields Landing Area. This application is the result of a Code Enforcement action at the subject property related to the building in question and the condition of the site, and several other sites owned by the appellant. The Planning Commission denied the permit based on the fact that the unpermitted structure cannot be permitted as it does not comply with the Zoning Ordinance, Humboldt Bay Area Plan or the County Flood Loss Prevention Ordinance.

The appellant filed an appeal of the Planning Commission denial of the project. The applicant takes issue with process during the Planning Commission meeting and the information presented to the Planning Commission by staff. The appeal is addressed in more detail below. Staff does not find merit in the appeal and recommends the Board of Supervisors deny the appeal and uphold the Planning Commission denial of the Conditional Use Permit.

Project Description

The application is for an after the fact Coastal Development Permit to address unpermitted work including demolition and partial reconstruction of a single-family residence. The applicant submitted the application in response to a Notice to Abate Nuisance and a Notice of Violation with Civil Penalty, issued July 2, 2019. This is a continuation of violations first cited in 2004 (issued by the County Department of Environmental Health). Additionally, the illegally constructed structure does not comply with the Residential Suburban (RS) zoning development standards (encroaches into required yard setbacks) and does not meet the required elevation standards in the County Flood Damage Prevention Ordinance (applies to Fields Landing since 2016). A residential structure was removed in 2010 thus removing any claim to a non-conforming status for buildings on the site and any new construction must be subject to compliance with current codes. The request as submitted does not comply with the Zoning Ordinance or the Humboldt Bay Area Plan and cannot be approved.

Project History

The subject site has been in the Code Enforcement process since 2004. The County has and continues to receive many complaints about this property. During this time the violations have not been resolved. Action on this Coastal Development Permit will enable resolution of the pending Code Enforcement case. The following are some of the more significant considerations:

1. 2004 - Present: Code Violations.
The property has a history of serious health, safety, and building code violations dating back to 2004, none of which have been resolved. See Attachment 3 for correspondence identifying violation on this property and Attachment 4 which includes pictures of the site and building. Some of the more significant violations include:
 - a) 2004 Exterior Inspection showed:
 - i. Building Substandard for human occupancy.
 - ii. Building lacking property weather protection.
 - iii. Trash scattered on property including car parts and engine blocks.
 - iv. Soil staining from engine oil.
 - v. Electrical hazards.
 - vi. Substandard sewer lines
 - b) 2013 Notice of Nuisance recorded against the property for ongoing construction work being conducted without permits.
 - c) 2019 Complaints of solid waste, vector harborages, unpermitted work on structures, hazardous

materials, sewage smell, and junk vehicles. An inspection warrant was needed to get into property to inspect for potential violations. The inspection discovered:

- i. Junk vehicles on the property.
- ii. Property inundated in solid waste.
- iii. Un-inhabitable structures due to lack electrical and gas service.
- iv. Incorrectly installed wood stove and propane water heater posed immediate safety hazard.

- d) In response to a July 2019 Notice to Abate and Notice of Violation the applicant appealed the Notice and also filed an application for Coastal Development Permit (CDP) in August of 2019. This CDP application was in process until February 4, 2021.

2. 2006-2016: Building Permit Applications and Inspections.

In response to the Substandard Housing Notice and Vacate Order issued in 2004, the property owner/applicant submitted four separate building permit applications:

- a) March 9, 2006: The building permit was for: “*Interior remodel of existing SFR/new slab foundation/drywall/siding/electrical/plumbing/windows/new garage foundation*”. According to the site plan, the work was for a new foundation on the house built in 1950 with an addition built in the early 1960’s. In 2007 a permit to construct (07-1273) was issued. The project was abandoned without completing any building inspections required to keep the permit active. The permit expired. No work was done under this permit.
- b) March 30, 2009:
The plans and project description were the same as submitted in 2006. A permit to construct (09-358) was issued on 4/29/2009. A series of inspections were scheduled and rescheduled (because the applicant was not present on-site during the scheduled inspection). The last scheduled inspection was on Friday 7/10/2009 but did not occur because the owner/applicant was not present. The inspector returned the following Monday (7/13/2009) and found that the applicant had poured the slab foundation without inspection of the forms or footing. Instead of issuing a stop work order for the unpermitted foundation, the Building Inspector attempted to work with the applicant and requested evidence of an engineer’s inspection with photos and receipts of the new slab foundation. None of this information was ever provided by the applicant and the permit expired. The slab foundation was not legally poured because no inspection was conducted. No additional inspections were performed. On August 10, 2010, The Building Inspector went by the project location and found the house demolished. Sometime between 7/24/2009 and 8/10/2010 the applicant had removed all walls and roof. No house remained. (See photo dated 8/18/2010, attachment 3)
- c) August 1, 2014: A third building permit application was submitted but was never made complete and expired on December 30, 2015 before a permit to construct was issued.
- d) December 30, 2015: A fourth application was submitted and never made complete and expired

on December 29, 2016 before a permit to construct was issued.

No permitted work has been completed or inspected under any of the permits. The work that has been done is outside of the permit process and thus does not vest any of the construction.

Permitting Requirements for the Subject Property

The applicant would like to treat the reconstructed house as a non-conforming structure because the foundation was poured with walls and roof constructed in the same location/footprint as the prior home. The permits identified above were for interior modifications and to replace the foundation and was not for demolition and reconstruction of the home. These were approved under the Zoning Ordinance provisions of “one for one” replacement without expansion or enlargement of the structure. Under these circumstances no variance is required. In demolishing the house, the applicant lost the non-conforming status of the existing house, so this application is not for work on a non-conforming house, but rather is by definition a new structure. Section 313-132.5.1 of the Zoning Ordinance provides that *“A Variance will be required for the total replacement or expansion of structures where replacement or expansion of structures would not conform with development standards.”*

In order to approve a building in this location a variance from the setback standards would need to be approved. The applicant has been made aware that either a variance for the setback reductions must be obtained, or the site must be designed to conform to Zoning Ordinance standards. The applicant has been unwilling to either apply for the variance or to modify the design to comply with Zoning Ordinance Standards. The Notice Order given to the applicant as part of the Code Enforcement Action stated the applicant needed to obtain necessary permits including a Coastal Development Permit.

The Coastal Development Permit is required because both demolition and construction in the Coastal Zone are considered development and require a CDP. There are areas in the Humboldt County Coastal Zone where exemptions are available for single family residences, but since the site is between the first public road paralleling the sea and the bay there are no exemptions from the CDP requirement. The applicant is requesting approval of what exists on site currently.

Analysis of the application for CDP is based on the regulatory guidance given in the Humboldt Bay Area Plan (HBAP) and the Humboldt County Code. In taking action on this application the Planning Commission adopted findings establishing why this application does not comply with the provisions of the code or HBAP. These findings can be summarized as follows:

a) Zoning Ordinance -- Required Yard Setbacks:

The existing structure does not comply with the required setbacks of the RS district and thus, cannot be approved without approval of a variance. A variance has not been included in the application or the request for an appeal. If a variance application were to be considered, approval of a variance, requires the finding that there are extra-ordinary circumstances applying to the lot and that the granting of the variance would not be a special privilege. The lot is much smaller than other lots in the neighborhood and is substandard for the Zone. It is apparent that this parcel and the adjacent parcel were once a single parcel but had been split before 1966. This resulted in a parcel that appears to be about 3,600 square feet. A small residence could be built on this lot without

encroaching into the required yard setbacks. The building envelope would be 1,050 square feet. A house with small attached garage or carport would fit with the character and size of the other homes nearby. Given the small size of the parcel, a variance could be potentially be justified, depending upon design. The existing structure has a 1-foot setback along Central and does not maintain any corner visibility at the intersection of Central and West. These are health and safety issues that need to be addressed. The applicant has not been willing to consider such modification. Without the applicant being willing to consider a redesign and modification instead of this proposal it is difficult to propose alternatives. At this point the only conclusion that can be made is that the proposed development does not conform to the standards established by the Zoning Ordinance.

b) Flood Damage Prevention Ordinance:

The subject site is within the regulatory floodplain as established by the Flood Insurance Rate Map (FIRM). Residential development in this area is subject to the County Flood Damage Prevention Ordinance §335-5 Provisions for Flood Hazard Reduction. The approximate base flood elevation is not identified on the FIRM map. In order to issue a building permit there would need to be a flood elevation certificate prepared by a licensed engineer and the lowest habitable living space must be elevated one foot above that. This is a design element that should be known as part of the application for a CDP. The existing building cannot be authorized under the flood damage provision requirements. It is not clear that the existing foundation could even be used to allow construction of a house under the flood damage provisions requirements because the foundation was not designed to support an elevated structure subject to flooding, and further it was not inspected to know how much reinforcement is in place or how thick the slab is. As it stands the existing house cannot be permitted under the flood damage provision requirements and it is unknown whether the existing unpermitted slab can be used for an elevated structure. In order to permit a structure on the site, the existing structure will need to be removed. The applicant is requesting approval to keep the existing structure,

c) Public Health and Safety:

A required finding of all permits is that the project does not pose a danger to the public health, safety, and welfare. As stated in the discussion on code enforcement actions the existing house has been constructed without benefit of permits and has elements that pose a danger to anybody who lives there and possibly to the neighborhood. In addition, there is the circumstance of the house being in the flood plain and not constructed subject to flood damage prevention requirements. This puts people and property at risk in the event of flooding.

Another element that needs to be considered is that the subject site is in a location that will likely be impacted at some point in the future by sea level rise. Some consideration is needed to address the potential impact and ensure that the structure can last through nuisance impacts (wave run up during King Tide events) until permanent provisions are made.

Part of the purpose of the street side setbacks on a corner lot is to provide line of sight of cars circulating on the streets. In order to provide clear line of sight on corner lots it is desirable to have a line of sight across the property extending from a point 30 feet from the intersection on one street to 30 feet from the intersection on the intersecting street. This is referred to as a clear visibility triangle. This is not provided with the current structure placement.

Appeal

The appellant has presented the following statements in support of the appeal. This report lists the claims and responds to each.

Appeal Issue 1:

“Unjustly/unfairly treated at Public Hearing: “Abuse of discretion of the Hearing Officer/Planning Commission.”

- *“Last item on agenda at - 9pm commissioners already strained and ready to be done.”*
- *“Commissioners hastily moved from comments to vote unlike previously heard topics.”*
- *“Wasn’t allowed to respond or have a closing statement, unlike all other representatives from previously heard topics who were asked several times if they had anything else, they would like to say before going to a vote.”*
- *“No time allowance, nor property notification of meeting or informed of importance of meeting.*
- *Now being charged \$339.87 for hearing”*

The Planning Commission agenda follows a specific process for every meeting. The McGuire CDP was not a consent item and was not a continued public hearing item. It was placed last. The placement on the agenda had no bearing on how the Planning Commission acted on the application. The Commission received the staff report and took public comment, including testimony from the appellant’s family.

The Chair did allow the appellant and his family member to speak to the issues being raised. There was not a lot of questions raised by the public or the Planning Commission and so there was not a need to ask any additional questions of the applicant.

The project was noticed in accordance with Humboldt County Code section 312-8 Public Notice Procedures. Additionally, in a 12/29/2020 email, Staff informed the applicant’s representative that the Coastal Permit would be heard by the Planning Commission due to the permit application becoming controversial. Staff sent the applicant’s representative an email dated January 12, 2021 informing him that the staff report would recommend denial of the Coastal Permit. There was adequate constructive notice of the issues associated with the application and the fact that it was being scheduled for a hearing.

There is no additional charge for the appeal hearing, this is a flat fee.

Appeal Issue 2:

4 main reasons (stated by Tricia Shortridge) to deny permit.

- *It’s a after the fact permit*

***“Response:** No work was done until Code Enforcer told me “just want to see you finish” which was a verbal go ahead and all demolition was micro managed by Code Enforcer. Many “after the fact” permits granted in Humboldt County.”*

- Long history of code violations

***“Response:** Admit some fault; going through hard times without support. However now focused on and committed to moving forward and the intention to complete project in timely manner upon approval and with support network behind me.”*

- Existing violations which are still there.

***“Response:** Been under direct supervision by Code Enforcement, told conflicting things and have been given different direction from different agencies. Although there’s still work to be done, I have already done multiple things asked, currently much cleaner than represented by presentation and **currently in compliance** with Code Enforcement (see attached).”*

- No variance.

***“Response:** Trisha agreed to start application for a variance by end of 2020 however never did. Time it has taken from first getting permit to now there has been new zoning laws/code.”*

The response to item 1 above is cryptic. The applicant claims that demolition occurred under direct supervision by the CEU, however, there is no documentation in the Code Enforcement records ordering the demolition of the house and there are no demolition permits issued by the Building Department. Code Enforcement at that time was not within the Planning and Building Department and had no authority to issue any direction relative to demolition permits or building permits. This is an implausible claim.

In the second bullet the appellant indicates a desire to complete the work in a timely manner. This is probably true, but in fact the violations on the property has been at issue for over 16 years.

In the third response the appellant claims to have been under direct supervision of Code Enforcement and been told conflicting things and that he has already cleaned things up. There is no record showing that the code violations have been resolved. A letter dated August 12, 2020 from the Code Enforcement Unit allows for an (Covid-19 related) extension in time to resolve the code violations. The letter directed the appellant to “Continue your permit application # PLN-2019-15773, until a Coastal Development Permit (CDP) is issued” and to Please contact me before 9/2/2020 to schedule a follow-up compliance inspection in order to confirm and document compliance with the needed actions. The appellant has still not followed upon on the inspection to demonstrate he has cleared all other violations. The fact of the situation is that the site and other sites in Fields Landing controlled by the applicant have continued to accumulate debris, to a point that there are now trailers full of debris parked on the street in Fields Landing. The appellant has not been complying with the direction from Code Enforcement to clean the area up. .

The appellant claims to have been unaware of the need for a variance. On 12/28/2020 the applicant’s representative was notified that the project would be heard at the Planning Commission in January 2021. On 12/29/2020, staff emailed the applicant’s representative to inform him that the residence

does not qualify to be a non-conforming structure and that either the residence must be demolished, and constructed in conformance with the zoning district standards, or a variance must be requested. Staff made a follow-up phone call to the applicant's representative and there was a follow-up email to this phone call when it was agreed that by January 6, 2021, the applicant or representative would inform the Planning Department on how they wanted to move forward. On January 12, 2020 an email was sent to appellant's representative informing him the staff report would recommend denial of the CDP because the Planning Division has not heard back (see attachment 4). There have not been any changes to Zoning Laws resulting in the need for the variance.

Appeal Issue 3:

The appellant makes the following claims:

- *Previously approved and permitted plans. **Work was done under fully approved permit***
- *Under direct supervision of Code Enforcement during whole process was told to take down building wall work was inspected.*
- *Work done up to approve permit standards, foundation permit accepted by Building Department and Planning Department Coastal permit should not be required*

As discussed above, in contrast to the appellant's claim none of the work performed has been undertaken with a valid permit, or with county inspections. As also mentioned above the reconstruction of the house is development in the Coastal Zone and the location does not warrant to exception to the requirement for a CDP.

Appeal Issue 4:

“Not large intersection or traffic area, not necessarily blocking any viewpoint, majority of intersections uncontrolled in Fields Landing and other residences have structures right along edge of property line.

The Humboldt County Visibility Ordinance was adopted in 1974 as Ordinance 997 and is found in the Land Use and Development Code, Division 4 - Visibility Obstruction Regulations. The regulations call out Visibility Obstructions (341-2) as being “any natural or man-made object exceeding three feet (3') in height which blocks or impedes the vision. Visibility obstructions such as hedges, bushes, natural growth, buildings, structures, fences and signs are prohibited. The project is required to conform with the Visibility Obstruction Regulations in Section 341-1, et. seq. (attachment 4).

Appeal Issue 5:

- *Fields Landing Community in support- petition (see attached)*
 - *If allowed to build home the surrounding properties increase in value*
 - *Other examples of “nuisances” around Fields Landing*
 - *Allegations of continual reports can be misleading, is it one individual or multiple people*

supposedly making reports?

There is no petition showing community support of this project. In fact, the community expresses concern about the status of the property. Cleaning the property up will be a benefit to the neighborhood. This involves removal of the trash from the site, removal of material from adjacent property and the public right of way in addition to removing the illegal structure which is currently covered in tarps. There is no evidence that allowing the existing structure to be finished will increase surrounding property values. The applicant references “other nuisances” around fields Landing. Nuisance properties are addressed through the Code Enforcement Unit. There are several other sites that are in violation being pursued by Code Enforcement. The appellant has another site and debris in the street that fit into this category.

Appeal Issue 6:

“Specialized permits/allowances in CA- Home owner and builder, current pandemic situation

The Planning and Building Department, other than a brief period in early 2020, has been fully functional and open for business. No special considerations are necessary. The Department continues to work with homeowner/builders daily.

Appeal Issue 7:

Unprofessional, unfair and discriminatory treatment from Tricia Shortridge.”

- a. Not communicating in timely fashion about public hearing.*
- b. Overstepping job description, bypassing other agencies and requiring unrealistic demands-invoices (see attached).*
- c. Not properly completing or attempting job- email string, nothing checked on appeal application (see attached).*
- d. Not communicating in person-refusal to answer questions which is why Brian got involved.*
- e. Handwritten notes are wrong, invoice # to disregard is nonexistent (see attached).*
- f. Shows disregard for the project and issuing wrong/incorrect information*
- g. Setting prices to try and cause economic hardship and confusion. \$2,000 in one week compared to \$2,000 in year? (see attached)*

It is easy to target staff when an application does not have the desired result. In the best of performances there are areas that can be improved upon and in difficult circumstances this becomes even more true. In the context of an appeal the question of staff performance would be whether staff exceeded their authority or somehow presented false evidence that resulted in an outcome different than if true evidence were provided. In this particular case it has been demonstrated that the applicant did work without permits (a point he claims is untrue but is without documentation), this has been a Target of Code Enforcement since 2004 and is still not resolved. The current planner has not been involved with this case that long, and so has not been the person responsible for not resolving the issues or intensifying the violations. Approval of an appeal to allow a permit must be based on the facts associated with the particular case. The unrefuted facts associated with this particular case are as

follows:

1. The site has been in a Code Enforcement process since 2004 and has not yet been resolved. The applicant has applied for the Coastal Development Permit to resolve a portion of the violation (Development within the Coastal Zone without a Coastal Development Permit.)
2. The structure at this location constructed in the 1950's was removed without appropriate Demolition Permit
3. The structure currently in place was erected without approved building permits or inspections
4. The existing structure violates the Setback standards specified in the Zoning Ordinance and does not comply with the Flood Prevention requirements of the County Code and thus cannot be approved with its current design or in its current location. The structure must be removed.
5. Once action on the Coastal Development Permit is taken abatement on the violations can begin.

The Planning Commission did not take action to deny the Coastal Development Permit because staff had inappropriately characterize information, but rather because the facts associated with the case point to a conclusion that the Coastal Development Permit in its current form cannot be approved.

FINANCIAL IMPACT:

There will be no additional effect on the General Fund.

STRATEGIC FRAMEWORK:

This action supports your Board's Strategic Framework by enforcing laws and regulations to protect residents.

OTHER AGENCY INVOLVEMENT:

Public Works

ALTERNATIVES TO STAFF RECOMMENDATIONS:

There is no alternative to permitting the existing structure. If the Board wishes to approve something, the Coastal Development Permit would need to be conditioned to require significant changes to the applicant's request. If the applicant were to agree to this direction something could be worked out. This alternative is not recommended at this time given the lack of progress by the appellant to abate the nuisance violations under his control in Fields Landing.

ATTACHMENTS:

NOTE: The attachments supporting this report have been provided to the Board of Supervisors; copies are available for review in the Clerk of the Board's Office.

1. Draft Board Resolutions and Findings
2. Appeal filed by Gerald McGuire
3. Staff Report and Resolution of the Planning Commission, Resolution No. 21-XX
4. Correspondence between Planning Division staff and the applicant/appellant
5. Dept. of Public Works Conditions of Approval to PLN-2019-15773

PREVIOUS ACTION/REFERRAL:

File #: 21-363

Board Order No.: N/A

Meeting of: N/A

File No.: N/A