

BOARD OF SUPERVISORS, COUNTY OF HUMBOLDT, STATE OF CALIFORNIA

Certified copy of portion of proceedings; Meeting on _____, 2021

Resolution No. 21-____ Resolution of the Board of Supervisors of the County of Humboldt ADOPTING FINDINGS OF FACT, DETERMINING THE PROJECT IS EXEMPT FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT, DENYING THE APPEAL FOR RECORD NO. PLN-2019-15773, AND DENYING THE GERALD MCGUIRE COASTAL DEVELOPMENT PERMIT RECORD NO. PLN-2021-17025.

WHEREAS, Gerald McGuire, on August 20, 2019, applied for a Coastal Development Permit to construct a two story 1,700 sq. ft. residence on APN 306-024-004 in the Fields Landing Area: and

WHEREAS, the Planning and Building Department reviewed the application and supporting evidence and referred the application materials to applicable reviewing agencies for site inspections, comments and recommendations; and

WHEREAS, on February 4, 2021 the Planning Commission denied the Coastal Development Permit.

WHEREAS, Gerald McGuire (“Appellant”) on February 18, 2021, filed an appeal in accordance with the Appeal Procedures specified in Humboldt County Code Section 312-13 et seq.; and

WHEREAS, the Board of Supervisors held a duly-noticed public hearing, *de-novo*, on March 23, 2021 and reviewed, considered, and discussed the application and appeal for the Coastal Development Permit; and reviewed and considered all public testimony and evidence presented at the hearing; and

WHEREAS, the Board of Supervisors closed the public hearing on March 23, 2021 and adopted a motion of intent to deny the appeal and to deny the Coastal Development Permit.

Now, THEREFORE BE IT RESOLVED, that the Board of Supervisors makes all the following findings:

- 1. FINDING:** **Project Description:** The application is an after the fact Coastal Development Permit for a new 1,700 square ft. single family residence located on between the coast and the first parallel public road.
EVIDENCE: a) Project File: PLN-2019-15773
- 2. FINDING:** **CEQA.** The proposed project is statutorily exempt from the provisions of the California Environmental Quality Act (CEQA)
EVIDENCE: a) CEQA Guidelines section 15270 specifically exempts from CEQA projects which are Disapproved.

3. FINDING: The proposed development is not in conformance with the Section 3.17 of the Humboldt Bay Area Plan requiring New Development to minimize risks to life and property in areas of high geologic, flood and fire hazard. Approval of the existing structure would subject people and property to the danger of flooding. In addition, the existing structure does not conform to the Flood Damage Prevention ordinance of the Humboldt County Code.

EVIDENCE: a) The site is located in an area subject to flooding as shown on the Flood Insurance Rate Map, and the depth of the floodwater has not been determined. In order to receive a building permit for a house at this location the lowest floor of the living area would need to be a minimum of one foot above the base flood elevation. The existing structure cannot meet this requirement.

b) The site is located in an area which is projected to be impacted by sea level rise. Some precautions must be taken to account for first the nuisance impacts of sea level rise associated with tide, wave and wind driven flooding and then to inform future property owners of the concerns with Sea Level rise.

4. FINDING: The proposed development does not comply with the setback requirements of the Residential Single Family Zoning District Development Standards and the applicant has not requested a variance from these standards

EVIDENCE: a) The residence constructed without permit has setbacks of:

Front: 6.5'
Street side 1'
Rear: 0'
Side 33' (House) 5'(garage)

b) The setback standards for the RS district are:

Front: 20'
Streetside 20'
Rear: 10'
Side 5' (House) 5'(garage)

5. FINDING: The existing house was constructed without permits and does not qualify as a non-conforming structure and cannot be approved in its current location.

EVIDENCE: a) There was a house constructed on the parcel in the 1950's in the location of the existing house. This house was added onto in the 1960s.

b) The house that was existing on the site was demolished in 2010 without benefit of a demolition permit or authorization to reconstruct.

c) Section 132.3 states: "A nonconforming structure which is in existence on the effective date of these zoning regulations, or any amendment thereto which makes such structure nonconforming, may be used and maintained indefinitely, except as otherwise specified in these regulations. No structural alterations to a nonconforming structure shall be allowed, except as expressly required by law or as expressly provided herein; unless the structural alterations conform with the applicable development standards of these zoning regulations." The removal of the prior house extinguished the

non-conforming status of the structure.

- d) In order to construct a house on a property with less than standard setbacks, a variance must first be approved. A variance application has not been submitted for this property.

6. FINDING:

The proposed development and conditions under which it may be operated or maintained is detrimental to the public health, safety, or welfare or materially injurious to properties or improvements in the vicinity.

EVIDENCE:

- a) 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. The identified dangerous elements include the structure being un-inhabitable due to lack electrical and gas service and Incorrectly installed wood stove and propane water heater. Since the house has not been fully inspected, it is not possible to know all the unsafe elements. It is known that the siding used has come from different reused materials and includes plastic, scraps of wood and other material which is not likely to meet building code requirements.
- b) The house is 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.

The existing structure does not provide a clear line of sight across the corner of the lot. This makes it difficult for vehicles traveling down a street to seek other vehicles, pedestrians and children on the side street and increasing the potential for accidents.

APPEAL

7. FINDING

The grounds for appeal are not adequate to warrant granting the appeal.

EVIDENCE

- a) The applicant contends he was unjustly/unfairly treated at Public Hearing and it was an abuse of discretion of the Hearing Officer/Planning Commission and cites the following:
- *“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”*

There is no merit in this claim. 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

b) *The applicant contends there were 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.”*

There is no merit behind any of these claims

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.

c) 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*

This is incorrect information as shown in the record contrary to the applicant's claims none of the work performed has been undertaken with a valid permit, or with county inspections. 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.

d) The applicant claims that there should not be a problem with a fence of house so close to the intersection of two streets within the Clear Visibility Triangle. "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.

e) The appellant argues that the Fields Landing Community in support- petition

- 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.

- f) *The appellant argues there should be “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.

- g) *The appellant argues that the decision was due to 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.

NOW, THEREFORE, based on the above findings and evidence, the Humboldt County Planning Commission does hereby:

- 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.

The foregoing Resolution is hereby passed and adopted by the Board of Supervisors on March 23, 2021, by the following vote:

Adopted on motion by Supervisor
and the following vote:

, seconded by Supervisor

AYES: Supervisors:

NOES: Supervisors:

ABSENT: Supervisors:

Virginia Bass

_____, Chair
Humboldt County Board of Supervisors

STATE OF CALIFORNIA)) SS. County of Humboldt

I, Kathy Hayes, Clerk of the Board of Supervisors of the County of Humboldt, State of California do hereby certify the foregoing to be a full, true, and correct copy of the original made in the above-titled matter by said Board of Supervisors at a meeting held in Eureka, California as the same now appears of record in my office.

In Witness Whereof, I have hereunto set my hand and affixed the Seal of said Board of Supervisors.

KATHY HAYES Clerk of the Board of Supervisors of the County of Humboldt, State of California

By: KATHY HAYES

Date: _____, 2021

By _____ Deputy