



# COUNTY OF HUMBOLDT

For the meeting of: 5/21/2024

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File #: 24-868

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**To:** Board of Supervisors

**From:** Planning and Building Department

**Agenda Section:** Public Hearing

**Vote Requirement:** Majority

**SUBJECT:**

An Appeal of the Planning Commission's Condition of Approval for a Parcel Map Subdivision and Special Permits.

**RECOMMENDATION(S):**

That the Board of Supervisors:

1. Open the public hearing and receive the staff report, testimony by appellant, and testimony from the public; and
2. Close the public hearing; and
3. Adopt the resolution (Resolution 24-\_\_\_), (Attachment 1) which does the following:
  - a. Finds that the project is consistent with the development density and policies established by an existing community plan and General Plan for which an EIR was certified, and that no additional environmental review is required per section 15183 of the State CEQA Guidelines; and
  - b. Finds that the proposed project complies with the General Plan and Zoning Ordinance; and
  - c. Denies the Appeal submitted by Robert Sutter; and
  - d. Approves the Sutter Parcel Map Subdivision and Special Permits subject to the Recommended Conditions of Approval (Attachment 1A).
4. Direct the Clerk of the Board to give notice of the decision to the Appellant, the Planning and Building Department, and any other interested party.

**SOURCE OF FUNDING:**

The appellant has paid the fee associated with filing this appeal. The cost of the appeal exceeds the appeal fee. The remainder of the cost is funded by the General Fund Contribution to the Planning and Building Department (1100277).

**DISCUSSION:**

*Executive Summary*

This is an appeal of the Humboldt County Planning Commission's April 4, 2024, approval of the Sutter Parcel Map Subdivision and Special Permits (PLN-2023-18146) by a 7-0 unanimous vote. Robert Sutter (Appellant) is appealing Public Works Condition of Approval Item 2.6(e) that requires the subdivider construct a curb, gutter, and sidewalk along the northerly extension of Azalea Avenue as the Planning Commission was unable to make findings in support of granting an exception to the sidewalk requirement. Appellant is requesting this condition of approval be removed from the permit stating in their appeal application that, "The basis for the appeal is the restrictions placed on minor subdivisions, such as this, by the Subdivision Map Act, Government Code Section 66411.1 and the lack of any justification or nexus to the County Road Categories and the McKinleyville Community Plan, specifically

the circulation element.”

The Planning and Building Department is recommending the Board of Supervisors deny the appeal and approve the Parcel Map Subdivision and Special Permits as conditioned.

This is a *de novo* hearing, and the Board of Supervisors is not limited to the evidence in the existing record and may receive new evidence at the appeal hearing.

Project Information

A Parcel Map Subdivision of an approximately 2.26-acre parcel into four parcels with a 0.55-acre Remainder. The created parcels will range between 0.23 to 0.70 acres in size. An existing single-family residence will remain on the proposed Remainder, an existing Accessory Dwelling Unit will remain on proposed Parcel 2, and the existing detached garage and accessory structures will remain on proposed Parcel 1. A Special Permit is required pursuant to Section 314-43.1.1 of the Humboldt County Code (H.C.C.) to allow the existing detached garage and accessory structures to remain on proposed Parcel 1 prior to the development of a main building. An additional Special Permit is required pursuant to Section 314-99.1.2 of H.C.C. to utilize Lot Size Modification to allow lots less than the minimum 10,000 square feet in size required within the R-1-B-2 zone. The parcel is served with community water and sewer provided by the McKinleyville Community Services District.

During the Planning Commission hearing on April 4, 2024, the applicant attempted to provide justification for the Commission to make the following findings required to grant the exception to the sidewalk requirement.

1. That there are special circumstances or conditions affecting the property.
2. That the exception is necessary for the preservation and enjoyment of a substantial property right of the petitioner.
3. That the granting of the exception will not be detrimental to the public welfare or injurious to other property in the territory in which said property is situated.

During public comment, the applicant’s agent described how Azelea Avenue is steeper than it looks, and that sidewalk development would be counterproductive. He also stated that Azelea Avenue is a driveway, not a road. He went on to state that sidewalks are not required on private roads pursuant to Section 66411.1 of Government Code, and that there is no intention of dedicating Azelea Avenue to the County. Lastly, he stated that it would be too costly to develop an ADA compliant sidewalk. The applicant then spoke stating that at full buildout, he expects between 10 and 20 automobile trips per day on Azalea Avenue and doesn’t see a need for a sidewalk.

During the deliberations by the Planning Commission, the majority of the commissioners spoke about the benefit of having the sidewalk. Comments from the Commission include but were not limited to the following:

- McKinleyville currently consists of a patchwork of sidewalks.
- It would be nice to eventually have sidewalks consistent throughout McKinleyville.
- Future residents of the subdivision would appreciate that the commission upheld standard measures that would be required on other similar projects.
- The sidewalk would lessen the possibility of accidents involving automobiles and pedestrians.
- Granting the exception to the sidewalk requirement could set a precedent for future development, and the standard should be upheld.
- The commission needs to honor the requirements of Public Works when asked to approve projects involving the buildout of roads and sidewalks.

Ultimately, the commission was unable to make the required findings to grant the exception to the sidewalk requirement and approved the project as recommended by staff by a unanimous vote of 7-0.

Appeal

The appellant, Robert Sutter, which is also the applicant, is requesting that Public Works Condition of Approval Item 2.6(e) be removed from the permit stating in their appeal application that, "The basis for the appeal is the restrictions placed on minor subdivisions, such as this, by the Subdivision Map Act, Government Code Section 66411.1 and the lack of any justification or nexus to the County Road Categories and the McKinleyville Community Plan, specifically the circulation element."

Below is the applicant's justification from the Grounds for Appeal submitted by the Appellant on April 12, 2024 (Attachment 2), that the required findings can be made to grant the exception to the sidewalk requirement.

1. That there are special circumstances or conditions affecting the property.

"Azalea Ave. North is a private Right-of-Way, not subject to the requirements of public streets. The Department of Public Works did not address the private road legal status in the Subdivision Requirements presented to the Planning Commission. Section 66411.1 specifically states in part " ... the regulations shall be limited to the dedication of rights-of-way, easements, and the construction of reasonable offsite and onsite improvements for the parcels being created." The construction requirement of sidewalks on a private road easement is not a reasonable improvement for the parcels being created. If the property owners, through the Road Maintenance Association, desired sidewalks, then they could construct them at a time of their choosing. If the property owners desire some other improvement, such as landscaping, then that would be their choice as well. The county has not shown or referenced any legal document that bestows those decisions to the county. The McKinleyville Community Plan referenced in the Subdivision Requirements extracts one statement out of context from the MCP, stating that sidewalks shall be incorporated into the design of subdivisions when warranted. Azalea Avenue North is not part of the McKinleyville Community Plan Circulation and Public Facilities element. There is no connectivity with the County required sidewalk since this is a dead-end sidewalk."

Staff Response:

Azalea Avenue extension is a road. It is not a driveway as it serves more than one property. The status of a road as public or private does not change the functionality of a road, or the need to protect public health and safety. Subdivision Map Act Section 66411.1 does not preclude requirements for construction of onsite curb gutter and sidewalk as these are reasonable improvements needed to protect the public health, safety, and welfare. Public Works uses zoning to determine when non-vehicular facilities need to be provided on roads, whether Public or Private. In general, areas that are primarily zoned for 1 acre and less are considered urban and need pedestrian facilities (curb, gutter, and sidewalk). Areas primarily zoned above 1 acre to 5 acres are considered suburban and need paved shoulders to accommodate bicyclists. Areas primarily zoned above 5 acres are rural and no amenities are needed for the road. Public Works has considered the site-specific circumstances unique to this proposed subdivision and finds that it is highly likely that the residents living in this proposed subdivision off the northerly extension of Azalea Avenue will walk on this road to gain access to existing pedestrian facilities on Sutter Road. Public Works finds that California Building Code (CBC) requires pedestrian facilities to be separated from the road; therefore curb, gutter, and sidewalk are necessary.

2. That the exception is necessary for the preservation and enjoyment of a substantial property right of the petitioner.

"The private easement containing Azalea Avenue North serves to provide the applicant and the Road Maintenance Association the right to use or develop the easement. The proposed minor subdivision is infill development consistent with planned growth for the area. The proposed project helps achieve maximum buildout for the community and supports construction of much needed additional housing units. The new infill housing would provide valuable tax base to the County of Humboldt."

Staff Response:

There is no disagreement about this statement. The statement is not a justification for elimination of the requirement to install the curb, gutter and sidewalk.

3. That the granting of the exception will not be detrimental to the public welfare or injurious to other property in the territory in which said property is situated.

Azalea Avenue North is a private road with no public access and will not be detrimental to the public welfare or injurious to other property to where this property is situated. Typical studies show that a single-family dwelling would produce 10 trips per day. This would equate to 50 trips per day for the primary residences plus trips for the ADUs.

Further analysis of the Azalea Avenue Extension shows there is a corresponding easement for bicycle and pedestrian connectivity from Sutter Road to Blackbird Avenue. While this right of way is not public, it is for the benefit of approximately 68 parcels lying north of Sutter Road. The overall connection is the responsibility of the community, but it is appropriate to provide connectivity as part of the improvements for this parcel map. The remainder (about 80 feet) to Blackbird Avenue would need to be completed by the community. There may be sufficient nexus and proportionality to require the subdivider to complete this as an off-site improvement but since the project was conditioned by the Planning Commission for on-site improvements only it is recommended that only the onsite improvements be required as part of this parcel map.

The conditions of approval for the subdivision have been modified to include the following,

- Improve curb, gutter and sidewalk as shown in the diagram below showing the extent of the road improvements for Azalea Avenue Extension.
- Irrevocable dedication of right of way across Azalea Avenue to the County of Humboldt.



**FINANCIAL IMPACT:**

The appellant has paid the fee associated with filing this appeal. The appeal fee does not cover the cost of preparing this report and presenting it. Excess costs are borne by the General Fund allocation to the Planning and Building department.

**STRATEGIC FRAMEWORK:**

This action supports the following areas of your Board’s Strategic Framework.

Core Roles: Create opportunities for improved safety and health

**OTHER AGENCY INVOLVEMENT:**

Public Works has provided an Appeal Response Memo which has been incorporated into the staff report and is attached (Attachment 3).

**ALTERNATIVES TO STAFF RECOMMENDATIONS:**

The Board could choose to deny the appeal and approve the project as approved by the Planning Commission on April 4, 2024. The Board could also choose to revise or add other conditions of approval. The Board could also choose to deny the Parcel Map Subdivision and Special Permits.

**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 Resolution
  - A. Recommended Conditions of Approval
  - B. Revised Public Works Subdivision Requirements
  - C. Tentative Map
2. Grounds for Appeal filed by Robert Sutter
3. Public Works Appeal Response Memo
4. Planning Commission Staff Report April 4, 2024
5. Planning Commission Resolution 24-016

**PREVIOUS ACTION/REFERRAL:**

Planning Commission Resolution No.: 24-016  
Record ID: PLN-2023-18146  
Meeting of: April 4, 2024  
File No.: 24-403