

DEPARTMENT: Board

By: Supervisor Garry Parker

Phone: 966-3222

RECOMMENDED ACTION AND JUSTIFICATION:

(Policy Item: Yes ___ No X)

- Approve the property owner's request to execute an agreement with the County, with the conditions listed below,
- Direct County Counsel to prepare agreement, and
- Authorize the Chairman of the Board of Supervisors to execute the agreement on the County's behalf.

The recommended action will allow the existing 770 square foot house and deck to remain where it is located today. Recommended conditions to be included in the agreement are:

1. No additional construction can be done to the structure, which would in any way impede the ability to move the structure should that become necessary or required in the future.
2. The agreement will be contingent upon the property owner bringing the structure into full compliance with all current building codes.
3. Should the property owner, at any time in the future, violate County building, zoning or health codes on the property (including, but not limited to, building without a permit), the property owner will be required to move the building.
4. Full violation penalties (double building permit fees) will be assessed.

Justification for the recommended action is that the property owner has been unsuccessful in his negotiations with his neighbor to complete a lot line adjustment. Consequently, based upon the Board's action in October 1998, the property owner is faced with moving his structure a distance of 9 feet (or 13 feet according to information submitted by a concerned neighbor). This remedy (punishment) for the original violation (building a structure within a setback area) is out of proportion with the original violation. The structure is on the property owner's parcel. It is not within the easement. The Public Works Department has stated that it will not affect the future use, development and expansion of Blackberry Creek Road (within the 60-foot wide easement). The costs for moving the structure are extremely high, and it is unlikely that moving the structure 9 (or 13) feet will have any significant impact on the community. There has been no showing that allowing the structure to remain where it is located today will be a detriment to the easement or the adjacent parcels.

The recommended action is a fair and simple way to resolve the issue.

All previous health code violations have been addressed (a standard septic tank and leach field have been permitted, installed, inspected and approved by the Health Department). The building permit can not be issued pending action from the Board. There are some identified building code issues with the current structure design, which can be addressed through the permit process.

BACKGROUND AND HISTORY OF BOARD ACTIONS:

- 10/20/98: The Board denied the property owner's request for an agreement, gave the property owner eight (8) weeks to negotiate a lot line adjustment and commence the process of moving the road easement, and six (6) months to move the structure out of the setback area should the lot line adjustment process not be pursued. The Board also directed the Health Department to immediately conduct an inspection of the property for health code violations.
- 12/1/98: In response to a formal request from the property owner to reconsider their 10/20/98 action, the Board directed County Counsel to write a letter suggesting that the property owner exhaust all attempts to obtain a lot line adjustment, and then make his request to re-open the hearing.

LIST ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:

ALTERNATIVES:

- 1) Modify the terms and conditions of the proposed agreement.
- 2) Deny request and require that the structure be moved out of the setback area.

NEGATIVE ACTION (denying the agreement) would mean that existing structure could not remain in the setback area.

COSTS: (X) Not Applicable

A. Budgeted current FY \$ _____

B. Total anticipated Costs \$ _____

C. Required additional funding \$ _____

D. Internal transfers \$ _____

COSTS: () 4/5th Vote Required

A. Unanticipated revenues \$ _____

B. Reserve for contingencies \$ _____

C. Source description: _____

Balance in Reserve Contingencies, If Approved: \$ _____

SPECIAL INSTRUCTIONS:
List the attachments and number the pages consecutively:

1. Requests from Property Owner, Jack Andrews
2. Board Minutes & Action on Previous Requests
3. Information about Building & Health Permits
4. Board Packet from 10/20/98 Hearing
5. Correspondence Regarding 10/20/98 Hearing

CLERK'S USE ONLY

Res. No.: 99-255 Ord. No.: _____

Vote - Ayes: _____ Noes: _____

Absent: _____ Abstained: _____

Approved Denied

Minute Order Attached No Action Necessary

The foregoing instrument is a correct copy of the original on file in this office.

Date: _____

ATTEST: _____

MARGIE WILLIAMS, Clerk of the Board

By: _____

Deputy

ADMINISTRATIVE OFFICER'S RECOMMENDATION:

This item on agenda as:

_____ Recommended

Not Recommended

_____ For Policy Determination

_____ Submitted for Comment

_____ Returned for Further Action

Comment: _____

A.O. Initials: JH



COUNTY of MARIPOSA

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MARIPOSA COUNTY BOARD OF SUPERVISORS

MINUTE ORDER

TO: SARAH WILLIAMS, Interim Planning Director
FROM: MARGIE WILLIAMS, Clerk of the Board *MW*
SUBJECT: Agreement Between Jack Andrews and the County of Mariposa; Res. 99-255

THE BOARD OF SUPERVISORS OF MARIPOSA COUNTY, CALIFORNIA,

ADOPTED THIS Order on August 17, 1999

ACTION AND VOTE:

Sarah Williams, Interim Planning Director;

Resolution Approving Agreement Requested by Jack Andrews to Allow a Residential Structure to Remain in the Zoning Ordinance Front Yard Setback Area; APN 014-150-036 (Blackberry Creek Road) with the Following Conditions:

- Direct County Counsel to Prepare Agreement
- Authorize the Chairman of the Board of Supervisors to Execute the Agreement on the County's Behalf (Supervisor Parker)

BOARD ACTION: Sarah Williams presented the staff report, and she responded to questions from the Board relative to status of compliance with the septic tank system; dates of the construction on the residential structure and when the County became involved; status of tax assessments and delinquent fees and building permit fees and penalties; and size of the parcel. Gary Estep, Assessor, responded to questions relative to the status of tax assessments and delinquent fees, and he advised that the new structure would be assessed and that value added to the existing parcel. Staff responded to additional questions from the Board relative to the amount the house is encroaching into the setback area and the location of the other residence on the parcel in relation to the subject residence.

Input from the public was provided by the following:

Eric Andrews thanked the Board for hearing his request; cited reasons for front yard setbacks and stated his residence is more than 55 feet from the existing road and at the present time he is at the very end of the road; stated he is agreeable with the proposed agreement; and he advised that they tried to work out a lot line adjustment with the neighboring property owner and they contacted house movers and neither option was financially possible. He stated he feels it would result in a severe punishment if he is required to tear his house down to accommodate the possible construction of a road which may never occur. He further stated

he does not feel that it would be precedent setting to sign an agreement because most people would not want to go through this process with the proposed conditions.

Jack Andrews commented on why the home was constructed, and advised that in the beginning they just had enough funds to construct a tent structure. He stated they called the Building Department prior to siting the tent structure to determine how far it needed to be from the property boundary. He feels everything was okay until a neighbor complained. He stated they did not take out a building permit because they did not have the funds; they borrowed funds for the structure and traded work to improve it. He stated it is a nice home now. They never intended to avoid the permit process because they knew that P.G. & E. would not connect power without a permit. He stated they did not have room in their house for Eric and his son to continue to reside with them, and now their daughter and her son lives with them. They are trying to make sure that their family functions and it creates a financial hardship. He noted that Eric has health problems that does not allow him to work. He also advised that the road was built to conform to the terrain versus the easement, as has occurred with other roads. He stated they do not feel that they are impacting anyone. He responded to questions from the Board relative to the status of power to the structure, when the tent structure was erected, and when the permanent structure was built.

Mike Noriega, neighboring property owner, representing John Alger – Trustee for their property, asked to be able to rebut at the end of the hearing if the applicants are allowed to speak again and bring up anything new. He stated he agrees with the Board's last action and he feels it was the right thing to do. He stated he feels the County has put him in the position of being the primary proponent in this matter. He feels the material in the agenda package makes this matter clear. He noted that a quarter of the property owners in the area are absentee owners and have their trust in the County to protect their interests while they are away. He stated he feels that centerline of the easement is not the centerline of the road and that the road will be developed in the future. It is the primary entrance to a large developable parcel owned by Mr. Von DerAhe. He stated they have an improved site for a barn and a permit to construct which will need to be moved if they negotiate a lot line adjustment, and he does not feel that the Andrews had a serious offer for the lot line adjustment. He also noted that Eric Andrews has not moved out of the structure as previously requested by County Counsel. The septic system is in; however, the power connection does not meet code, and they have had plenty of time to come into compliance with the code. He requested that screening (landscape buffer) be included in the conditions. He responded to questions from the Board as to when he applied for a building permit for his barn; proposed location of the barn and his residence. Mr. Noriega further commented that he feels it is important to protect the character of the community. He feels the Andrews have broken the law and the County is considering entering into an agreement with them, and he asked how that will be enforced. He further asked about the status of the proposed addition to the residence and the condition to add the shear for structural integrity. He stated if the agreement is approved, it should be extended to others in the same situation and that this establishes a precedent for others to build in a similar situation. He asked about future liability for the County if the structure needs to be moved. He feels the law should allow for the tax assessments to go back to the time when the construction occurred. He presented the scenario of a child needing a jacket and the family justifying the child taking the jacket from the store because they could not afford to pay for it, and he stated he feels that is similar to what is occurring in this situation. He presented three letters supporting his position, and he urged the Board to not allow this second request for an agreement.

Bryce Johnson, neighboring property owner to the Noriega's, stated they have lived in the area for fifteen years and the Andrews have been outstanding neighbors. He stated the structure in question is beautiful and well-made and he does not find it objectionable. There is plenty of room, and he stated he appreciates the Board's fairness in dealing with this issue.

There was no further public input. Discussion was held by the Board. Supervisor Parker referred to information he requested from the Planning Department relative to the status of the building permit fees and penalties, and information from the Assessor relative to tax assessments and delinquent fees. Jeff Green, County Counsel, responded to questions from the Board relative to the whether the nine-foot encroachment into the setback affects the Noriega property, whether he could still build his barn as proposed, and relative to enforcement of the agreement with the Andrews.

Mr. Noriega asked to be able to speak again, and he was advised that there was ample opportunity given for public comment.

The Board continued with its discussion. Staff responded to additional questions from the Board relative to the condition to add the shear with the rectangular addition to the structure, and what would happen if the addition is not built; the existing size of the structure and the proposed size; and whether any other fees are involved for the permit. Jeff Green responded to additional questions and advised that the structure is not causing any damage that the setback code was adopted to avoid. Gary Estep responded to a question from the Board relative to the amount of back taxes and delinquent fees that are due.

(M)Parker, (S)Reilly, Res. 99-255 adopted approving the property owner's request to execute an agreement with the County, with the conditions as recommended by staff; with all applicable permits to be obtained and appropriate fees and penalties to be paid; and with direction for the Assessor to work with County Counsel and the property owner to establish the amount of taxes that are due and past due, with all of the assessments and delinquent fees to be paid. Staff responded to questions from the Board relative to the status of occupancy of the structure, whether the agreement can be made exclusive with the Andrews versus with the property, and relative to the timeframes for compliance. Motion to include direction that the agreement will run with the property and for County Counsel to work with staff on appropriate language to ensure that the structure will be moved should that become necessary in the future, and direction was given for the agreement to be brought back to the Board for approval on September 14, 1999, with recommendation for timeframes for compliance/Ayes: Reilly, Balmain, Parker, Pickard; Noes: Stewart.

cc: Jeffrey G. Green, County Counsel
John Davis, Building Director
Gary Estep, Assessor
File