

**MARIPOSA COUNTY
BOARD OF SUPERVISORS**

**AGENDA
ACTION FORM**

DATE: May 17, 2011
AGENDA ITEM NO. 10

DEPARTMENT: Planning

BY: Alvaro Arias, Associate Planner
PHONE: 742-1218

RECOMMENDED ACTION AND JUSTIFICATION:

Staff recommends that the Board of Supervisors hold a public hearing on the item, take action based on the options provided in the Staff Report and continue the item with direction to Staff to bring back a resolution reflective of the action(s) taken.

BACKGROUND AND HISTORY OF BOARD ACTIONS:

- On April 12, 2011, the Board of Supervisors continued the public hearing for Appeal No. 2010-175 to May 17, 2011 at 2:00 pm or as soon thereafter as possible.

ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:

Financial Impact? () Yes (X) No	Current FY Cost: \$	Annual Recurring Cost: \$
Budgeted In Current FY? () Yes () No () Partially Funded		
Amount in Budget: \$ _____		Staff Report to the Board with Attachments _____
Additional Funding Needed: \$ _____		(as listed on page 19 of Staff Report) _____
Source:		_____
Internal Transfer _____		_____
Unanticipated Revenue _____ 4/5's vote		_____
Transfer Between Funds _____ 4/5's vote		_____
Contingency _____ 4/5's vote		_____
() General () Other _____		_____

CLERK'S USE ONLY:

Res. No.: 1622 Ord. No. _____
 Vote - Ayes: 4 Noes: Bobby
 Absent: _____
 Approved
 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
County of Mariposa, State of California

By: _____
Deputy

COUNTY ADMINISTRATIVE OFFICER:

Requested Action Recommended
 No Opinion
 Comments: _____

CAO: [Signature]



COUNTY OF MARIPOSA

P.O. Box 784, Mariposa, CA 95338 (209) 966-3222

JIM ALLEN, CHAIR
JANET BIBBY, VICE-CHAIR
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DISTRICT V
DISTRICT III
DISTRICT I
DISTRICT II
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MARIPOSA COUNTY BOARD OF SUPERVISORS

MINUTE ORDER

TO: KRIS SCHENK, Planning Director

FROM: MARGIE WILLIAMS, Clerk of the Board *MW*

SUBJECT: PUBLIC HEARING to Consider Appeal No. 2010-175, an Appeal of the Planning Commission's Denial of Variance No. 2010-101, which was Requested to Allow an Existing Structure Located in the Property Line Setback Area. Variance Applicant and Appellant: John O. Reynolds. Property is Located at 9997 Incline Road in El Portal. The Subject Appeal and Variance Involves APN 006-030-009, a 0.74 Acre Parcel in the General Forest (GF) and Scenic Highway Overlay (SHO) Zones (Public Hearing is Continued From April 12, 2011)

RES. 11-222

THE BOARD OF SUPERVISORS OF MARIPOSA COUNTY, CALIFORNIA

ADOPTED THIS Order on May 17, 2011

ACTION AND VOTE:

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Planning

PUBLIC HEARING to Consider Appeal No. 2010-175, an Appeal of the Planning Commission's Denial of Variance No. 2010-101, which was Requested to Allow an Existing Structure Located in the Property Line Setback Area. Variance Applicant and Appellant: John O. Reynolds. Property is Located at 9997 Incline Road in El Portal. The Subject Appeal and Variance Involves APN 006-030-009, a 0.74 Acre Parcel in the General Forest (GF) and Scenic Highway Overlay (SHO) Zones (Public Hearing is Continued From April 12, 2011)

BOARD ACTION: Kris Schenk, Planning Director, and Sarah Williams, Deputy Planning Director, were present. Alvaro Arias, Associate Planner, clarified that the hearing is to be held and following action by the Board, the recommendation is to continue the hearing with direction to staff to bring back a formal resolution reflective of the action(s) taken. He presented the staff report, reviewing the history of the appeal and the structure that was built without permits. He reviewed the three issues that were raised in the appeal: 1) footprint of the previous structure and for the new structure, and he advised of information obtained from the Assessor's Office; 2) nonconforming uses and restoration – County Code Section 17.08.020E; and 3) what constitutes "addition" – vertical or horizontal construction or both. He reviewed the findings that would need to be made to grant a variance; the five appellant's statements and staff's response; and the four options for action. He advised of additional correspondence that was received after the staff report was prepared, and of staff's response to the correspondence received from Roger Stephens. Staff

responded to questions from the Board relative to the option to direct staff to bring back a resolution of intention to initiate an amendment to the Zoning Ordinance to establish standards for both nonconforming uses and nonconforming structures; whether there was a different interpretation between the three Building Director's that were here during the timeframe involved in this matter relative to the setbacks – staff clarified that the setback determination would come from Planning; whether the difference in square footage between the Assessor's records and what the appellant is stating is the difference between the drip line and the foundation; and relative to staff's review of the Assessor's records. Brent Joseph, Assistant Assessor, responded to questions from the Board and stated he feels confident with the information in their records dated 1978 and 1988/property site visit, and he noted that the information was collaborated by a separate assessment and diagram done by the State Board of Equalization in a sampling. He further responded that the measurement would be of exterior walls and not the drip line. Staff responded to questions from the Board as to a record of when the permit was requested and received for the septic upgrade; relative to other options for expansion; and when the first complaint was received and whether the structure was completed.

The public portion of the hearing was opened and input was provided by the following:

Appellant's Presentation:

John Reynolds, appellant, advised that when he started this project, he did not know about the intricacies of building permits. He stated his contractor told him to do the project without obtaining permits so that it could be done faster, and that he could obtain the permits after the fact. He stated the new structure was built on the existing footprint, and he attended a meeting with Planning staff on-site to show what evidence he had that this was built on the existing footprint. He supplied a copy of the records from the Assessor's office to the Planning staff to prove that there was an existing building, and he pointed out to staff that the description and dimensions in the records were inaccurate. He provided information on the size and use of the original structure and discrepancies in the staff report. He advised that the new structure is not a three-story – it has a large loft over the kitchen for storage, it is a two-story structure with a slanted roof for a row of windows and the only access is by ladder. He noted he is being penalized with penalties for not pulling a permit before construction. He stated others in the neighborhood have been allowed to build additions. He responded to questions from the Board as to whether the contractor he used was licensed and whether there was a written contract; and he responded that the contractor was/is licensed and there was a verbal agreement with installment payments. He further advised that he planned to live in this residence while refurbishing his other residence. He took his contractor's advice, but realizes that this is his responsibility; and per his discussion with Attorney Anita Starchman Bryant, his building would have been permitted for where it is located now. He further responded that Roger Stephens is preparing drawings for the building, and he added that the Building Department has photographs that were taken by the contractor during the building process. Supervisor Turpin clarified that the issue today is not the building permit, but whether the building was constructed on the same footprint. John Reynolds responded to additional questions from the Board as to why the structure was built in the same footprint since it was raised and whether he has any other documents showing the size of the original structure; and he advised that the same footprint was used because his contractor told him that would be okay and he could get permits later, he has no additional documents and no appraisals were done when he purchased the property.

Anita Starchman Bryant, Starchman & Bryant Law Offices, stated they represent the appellant in this appeal, and she presented a written outline of her presentation and exhibits. She stated she feels they have the right to address any new information and rebut during deliberations. She advised that it is their opinion that had Mr. Reynolds originally applied for a building permit, he would have been granted one for this

project. She stated Mr. Reynolds built within the original footprint; setback requirements apply to structures and not uses; and they feel that setback requirements for additions apply horizontally and not vertically. Thus, they do not feel that a variance is necessary and should not have been applied for, and the Planning Commission hearing was not necessary. However, if the Board does not agree, she can address the variance findings. She agrees that a mistake was made with not applying for the building and septic permits; but noted that this is an existing structure that meets setback requirements and Planning can sign-off on the permits retroactively. She reviewed the list of what they consider to be facts in this matter, including information on the history and the appellant's attempts to take care of the permit issues. She responded to questions from the Board and advised that the septic was constructed without a permit and only feeds the new structure, and she advised that photographs of the structure are included in the Planning staff report. Attorney Starchman Bryant continued with her presentation and reviewed their evidence for each of the three issues that were raised in the appeal. She suggested that the Assessor be asked if they have ever been incorrect on documents. She responded to questions from the Board relative to the setback for Laurel Anderson's addition and the "office use only" page. In summary, Attorney Starchman Bryant stated Mr. Reynolds rebuilt in the original footprint; setback standards are for structures and not uses; and the setback was met because Mr. Reynolds rebuilt in the original footprint and the setback standards do not regulate second stories built within the original footprint. She asked again to be able to address any new information, and to address the variance findings if the variance issue is further considered. She responded to a question from the Board and clarified that that each residence has its own septic system; the system failed for the structure that was torn down after it was rebuilt and a new tank and leach line was installed.

Steve Dahlem, County Counsel, asked the Board to address Attorney Starchman Bryant's request to bifurcate the appeal issues, and he suggested that direction be given to future speakers to address the three appeals issues and not the variance at this time. The Board concurred.

Speakers in Support of the Appellant:

Mark Harris verified the same footprint was used from what he could tell by the photographs and his site visit. He responded to a question from the Board as to what would happen if he drilled a well without a permit; and he responded that the contractor should be held accountable. He feels that the County should make the penalty more severe to encourage permits to be obtained.

John Reynolds advised that he was planning to obtain a permit; but during construction his wife asked for a divorce and the permit was not his highest priority.

Don Starchman, Starchman & Bryant Law Offices, stated he is unaware of any situation in the County where a building was to be removed. He feels that staff is aware of other situations where permits were not obtained, and he feels that those people are just as negligent as Mr. Reynolds. He stated he feels that relying on a document with discrepancies versus the property owner's statement is unrealistic. The difference in the square footage is 30 square feet, and he does not feel that any court would uphold a decision to tear down a building for this. He does not feel that a vertical expansion is restricted to the setbacks, and he feels that Mr. Reynolds is entitled to a building permit.

Laurel Anderson stated she is the neighbor that built a two-story addition with a building permit. She stated she was finishing her house when Mr. Reynolds was starting his, and she can verify that he built in the same footprint – she walked by almost every day. She can understand Carol's (Bragg) complaint about the issues, but she feels that Mr. Reynolds would have received a permit if he applied for one as he did a similar addition to hers – both are close to the property line, and she added four feet to her foundation. She has known Mr. Reynolds since he was 12 years old and she does not feel that this is something that he would try to get away with. She does not feel that requiring the building to be torn down would accomplish anything and

Carol's complaints would still remain. She encouraged the Board to choose the option that benefits all of them. She responded to a question from the Board and clarified that the four feet she added was on the other side of her house and not within the setback.

Anna Reynolds, mother to John Reynolds, agreed that John acted in error by not applying for a building permit before construction took place; and she advised that he applied for the variance on the advice of Planning staff. She stated the contractor measured the old building before it was torn down; and she noted that the distance between a rock outcropping and the building is the same now as it was with the old building. She referred to statements made at the Planning Commission's hearing relative to the vertical expansion; and to the staff report and stated she feels it contains inaccuracies; i.e., the structure is two-stories and not three, the previous structure had cement and wood floors and not dirt, and relative to the reference that it was a shed. She feels it is better to have the new structure, and she stated that John advised Planning that the documents from the Assessor's Office were incorrect. She referred to Alvaro's visit to the site to measure the structure. She stated this building was constructed on the footprint of the original building.

4:10 p.m. Recess

4:24 p.m. The Board reconvened and continued with the hearing.

Opponents Presentation:

Carol Bragg stated she is a neighbor with adjoining property to Mr. Reynolds and has pictures showing the previous structure to be smaller; and she believes the Assessor's records are correct. She referred to a conversation she had with Mr. Reynolds after the flood in 1997, and he made a statement that the County will not let you do anything, so just do it, and plead ignorance. She advised that the Reynolds family built two homes in the County in the 1970's and should know the process. She commented on the previous structure and advised that the property line is not straight. She feels the footprint for the new structure is expanded from the previous structure. She stated there is a grey water line that was dumping on her property; there is constant noise from people camping in their cars and tents in addition to the tenants; she has problems with people parking on her property. She responded to questions from the Board advising that her delay in filing a complaint was because she was going through a divorce and had to go into hiding with her children and then she went back to school and was working full-time. She said the structure went up so fast she thought it was okay, then she found out it was constructed without a permit and the septic system continued to back up and the noise became unbearable. She further responded that if the structure is taken down and relocated on the property – to behind the residence where Mr. Reynolds resides, she feels that the problems will be monitored better by Mr. Reynolds. She stated that if someone feels that they can do whatever they want that feeling carries on – she feels that this is fraudulent and needs to be addressed. She responded that she moved there in November 1985.

Becky Crafts, Assessor, stated she is not in opposition, and noted that she went to school with John Reynolds and Mark Harris. She feels the basic question is whether the Assessor's Office records are correct and she cannot say "yes" or "no." She provided input on their staff inspection of the property when it was purchased by Mr. Reynolds in 1988 – she cannot verify that the shop or garage was measured. She agreed with Attorney Starchman Bryant that if a permit was applied for before construction, it probably would have been issued. She referred to situations where applicants apply for a deck replacement permit; and when staff checks with the Assessor's Office, they find there was never a deck in the first place. She advised that they were just asked to show their records for this matter. She responded to a

question from the Board and agreed that the Assessor relies on their records until they have something that shows they should be different.

Rebuttal by Appellant: none

Staff Wind-up: Staff responded to questions from the Board relative to the setback for the adjoining parcel; issue of vertical addition and discrepancy; relative to the option 3 action – the Board could determine that the text in Section 17.108.130 is not clear as to whether it applies the same to both “horizontal” expansion and “vertical” expansion of a structure that does not meet setbacks; relative to the history of allowing vertical expansions in setbacks and the Anderson project; whether the Planning Commission was given the information on the vertical/horizontal issue; and work on the draft Catheys Valley Community Plan and the status of allowing for expansion of a structure.

The public portion of the hearing was closed and the Board commenced with deliberations. Supervisor Allen commented on a recent appraisal he received on his residence with a different measurement of size from previous measurements. Staff responded to questions from the Board and reviewed the three appeal issues. County Counsel responded to a question from the Board and advised that he believes the primary issues were raised in the Planning Commission’s hearing and he advised that this Board has the authority to consider additional issues related to whether the permit should have been issued and relative to variance application requirements.

(M)Turpin, (S)Stetson, Res. 11-222 was adopted, finding that based on the testimony received that the new structure was built on the existing footprint, and approving option 3 in the staff report – determining that the text in Section 17.108.130 is not clear as to whether it applies the same to both “horizontal” expansion and “vertical” expansion of a structure that does not meet setbacks; directing staff to bring back a Resolution of Intention to initiate an amendment to the Zoning Ordinance to clarify this section of code. Sarah Williams advised that there is no need for a variance with the finding that the rebuilt structure is in the same footprint as the original structure. She further advised that this action will define that “addition” is for horizontal expansion for this issue. She stated direction should be given to staff to clarify the County Code for this issue/option 3; and that direction should be given to staff to bring back a Resolution of Intention to initiate an amendment to the Zoning Ordinance/County Code Section 17.08.020 to establish standards for both nonconforming uses and nonconforming structures/option 4 – the motion was amended to include this direction, agreeable with the maker and second. Further discussion was held. Ayes: Stetson, Turpin, Cann, Allen; Noes: Bibby. The hearing was closed.

Cc: Steven W. Dahlem, County Counsel
File