

**MARIPOSA COUNTY
BOARD OF SUPERVISORS**

**AGENDA
ACTION FORM**

DATE: June 7, 2011
AGENDA ITEM NO. CA-118

DEPARTMENT: Planning

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

RECOMMENDED ACTION AND JUSTIFICATION:

Approve Format for Resolution Finding that a Structure Built Without a Building Permit, Located Two Feet from the Eastern Side Yard Property Line on Assessor's Parcel Number 006-030-009, was Built within the Previous Foot Print and Abrogating Appeal No. 2010-101.

Justification is based on the information presented at and the deliberation conducted during the Board of Supervisors public hearing on Appeal No. 2010-101, which occurred on May 17, 2011.

BACKGROUND AND HISTORY OF BOARD ACTIONS:

5/17/2011: Board took action at a public hearing on Appeal No. 2010-101.

ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:

Modify format or findings within Resolution.

Financial Impact? () Yes (X) No Current FY Cost: \$ Annual Recurring Cost: \$
Budgeted In Current FY? () Yes () No () Partially Funded

Amount in Budget:	\$ _____	Draft Board of Supervisors Resolution
Additional Funding Needed:	\$ _____	_____
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.: 11-272 Ord. No. _____
Vote - Ayes: 4 Noes: Bibby
Absent: _____
MM 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: BB



COUNTY OF MARIPOSA

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

JIM ALLEN, CHAIR
JANET BIBBY, VICE-CHAIR
LEE STETSON
LYLE TURPIN
KEVIN CANN

DISTRICT V
DISTRICT III
DISTRICT I
DISTRICT II
DISTRICT IV



MARIPOSA COUNTY BOARD OF SUPERVISORS

MINUTE ORDER

TO: KRIS SCHENK, Planning Director
FROM: MARGIE WILLIAMS, Clerk of the Board
SUBJECT: Consider Items Removed from the Consent Agenda

RES. 11-272

THE BOARD OF SUPERVISORS OF MARIPOSA COUNTY, CALIFORNIA

ADOPTED THIS Order on June 7, 2011

ACTION AND VOTE:

Item 118 – Supervisor Bibby asked whether the Assessor has reviewed the resolution. Steve Dahlem advised of his discussion with the appellant's attorney and that he indicated that this matter would be considered at 4:30 p.m. He further noted that the requested action is to approve the format of the resolution which is consistent with the action taken by the Board at the appeal hearing. The Board concurred with continuing this matter to later in the meeting.

Continued Item 118 – Supervisor Bibby expressed concern with respect to the findings referencing the Assessor and State official records in general for that timeframe; and she noted that she did not support the appeal. (M)Cann, (S)Stetson, item 118 was approved/Ayes: Stetson, Turpin, Cann, Allen; Noes: Bibby.

CA-118

Planning

Approve Format for Resolution Finding that a Structure Built Without a Building Permit, Located Two Feet from the Eastern Side Yard Property Line on Assessor's Parcel Number 006-030-009, was Built within the Previous Foot Print and Abrogating Appeal No. 2010-101. Applicant and Appellant: John O. Reynolds. Project Site Location: 9997 Incline Road in El Portal; Res. 11-272

Cc: Mike Kinslow, Building Director
File

Becky Croft, Assessor/Recorder

STATE OF CALIFORNIA
COUNTY OF MARIPOSA
BOARD OF SUPERVISORS

Resolution
No. 2011-272

A resolution finding that a structure built without a Building Permit, located two feet from the eastern side yard property line on Assessor's Parcel Number 006-030-009 was built within the previous footprint and abrogating Variance No. 2010-101 John O. Reynolds, applicant.

WHEREAS an application for Variance No. 2010-101 was received on July 23, 2010 from John O. Reynolds for a property located at 9997 Incline Road in El Portal, also known as Assessor Parcel Number 006-030-009; and

WHEREAS Variance No. 2010-101 proposed a variance to the side yard setback standards to allow a previously existing garage that was re-built and expanded to include a residential unit without a building permit to remain two (2) feet from the side yard property line; and

WHEREAS the previously existing garage was a non-conforming structure as it was located in the side yard setback area; and

WHEREAS the Planning Department circulated the application among trustee and responsible agencies, interested public organizations, and others as appropriate; and

WHEREAS a duly noticed Planning Commission public hearing was scheduled for the 3rd day of December 2010; and

WHEREAS a Staff Report to the Planning Commission was prepared pursuant to the California Government Code, Mariposa County Code, and local administrative procedures; and

WHEREAS the Planning Commission did hold a public hearing on the noticed date and considered all of the information in the public record, including the Staff Report, testimony presented by the public concerning the application, and the comments of the applicant,

WHEREAS the Planning Commission of the County of Mariposa adopted Resolution No. 2010-027 denying Variance Application No. 2010-101; and

WHEREAS Variance Application No. 2010-101 was denied based upon the inability of the Planning Commission to make all of the findings required by State Law and County Code; and

WHEREAS an appeal of the Planning Commission's December 3rd, 2010 decision was received on the 23rd day of December 2010 from John O. Reynolds and that appeal is known as Appeal No. 2010-175 and was made to the Board of Supervisors, and

WHEREAS processing of Appeal No. 2010-175 was conducted pursuant to Mariposa County Resolution No. 10-92; and

WHEREAS on the 24th day of February 2011, during the processing of Appeal No. 2010-175, issues regarding the applicability of Section 17.108.020 were raised by the appellant's agent, and

WHEREAS on the 24th day of March 2011, during the processing of Appeal No. 2010-175, issues regarding setbacks not applying to vertical additions of an existing structure located in the setback area were raised by the appellant's agent; and

WHEREAS a duly noticed Board of Supervisors public hearing to consider Appeal No. 2010-175 was scheduled for the 12th day of April 2011; and

WHEREAS a Staff Report addressing the Notice of Appeal and the issues raised by the appellant's agent was prepared pursuant to local administrative procedures; and

WHEREAS on the 12th day of April 2011, the Board of Supervisors public hearing was continued to the 17th day of May 2011; and

WHEREAS the Board of Supervisors did hold a public hearing on Appeal No. 2010-175 on the 17th day of May 2011 and considered all of the information in the public record, including the Staff Report packet, testimony presented by the public, the Planning Commission's decision and Findings, the Notice of Appeal, the issues raised by the appellant's agent, information presented by the Assessor's Office, and the comments of the appellant; and

WHEREAS the Board of Supervisors did take action on the 17th day of May 2011; the Board of Supervisors adopted Resolution No. 11-222 finding that based on the information presented, including public testimony, the structure was built in the footprint of the previous structure. The Board found that Section 17.108.130 Structure location was not clear as to whether it applies to both "horizontal" expansion and "vertical" expansion of a structure that does not meet setbacks, and this specific building project, as a "vertical" expansion, can be allowed due to the lack of clarity of the current code. Additionally, the Board considered information presented by the applicant's agent and confirmed by planning staff regarding two building permits issued for vertical expansions of existing structures located in the setbacks area in 1994. The Board found that Section 17.08.020 Nonconforming uses was inapplicable to this situation; and

WHEREAS the Board of Supervisors directed staff to bring back a Resolution of Intention to initiate an amendment to the Zoning Ordinance to clarify Section 17.108.130 of County Code as to its applicability to "horizontal" and "vertical" expansions and to add provisions for nonconforming structures to Section 17.08.020; and

WHEREAS based on these findings of the Board of Supervisors no variance application is required in order to authorize the Building Permit for the reconstruction project and Variance Application No. 2010-101 is hereby abrogated; and

WHEREAS the Board of Supervisors directed staff to bring back a formal Resolution with findings supporting this action with reference to County Code Section 17.132.040.B and County Code Section 17.136.030; and

WHEREAS pursuant to County Code Section 17.132.040.C, the Board of Supervisor's decision on the 17th day of May 2011 cannot be considered "rendered" or final until a formal resolution with findings is adopted; and

WHEREAS on the 7th day of June 2011, staff scheduled a Resolution for the Board of Supervisors' consideration.

NOW, THEREFORE, BE IT RESOLVED THAT the Board of Supervisors of the County of Mariposa does hereby formally determine that:

1. The structure on Assessor Parcel Number 006-030-009 at 9997 Incline Road in El Portal owned by John O. Reynolds was rebuilt in the footprint of the previous structure and did not expand horizontally.
2. County code Section 17.108.130 Structure location 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.
3. This specific building project, as a "vertical" expansion can be allowed due to lack of clarity of Section 17.108.130 of County Code.
4. County Code Section 17.08.020 Nonconforming uses is inapplicable to this reconstruction project.
5. No variance is required in order for the Planning Department to authorize issuance of a Building permit for the reconstruction work.

BE IT FURTHER RESOLVED THAT the Board of Supervisors action is based upon the following findings:

1. Written and verbal public testimony supports the applicant's position that the rebuilt structure was built in the same footprint as the original structure. This includes the statements of the property owner, the statement of the project contractor, neighbors' statements, and photographs provided by the property owner.
2. Staff from the Planning Department took measurements in the field to attempt to address the statements of the applicant and agent that the Assessor/Recorder's office records and the State Board of Equalization records were in error. The planners' measurements were inconclusive.
3. Testimony was provided by the Mariposa County Assessor/Recorder that she couldn't confirm that the assessment records for the subject parcel's outbuildings were updated based on a field measurement at the time of transfer to the current owner.

4. There is no auditor identification on the audit document which the Assessor/Recorder states was prepared by the State Board of Equalization. The audit confirms the Assessor/Recorder's documents with regard to the structure in question. There is no date on the audit document. The applicant's agent identified the "errors" on this audit document to be the same as the "errors" on the Assessor/Recorders records.
5. Section 17.108.130 Structure location reads, "Additions to existing buildings, structures, or uses set forth in subsection E, where such building, structure, or use encroaches into a setback area, shall not be closer to the property boundary than one-half (1/2) the width of the setback requirement or closer to the property boundary than any part of the existing building, structure, or use, whichever constitutes the lesser encroachment." Information was presented to the Board of Supervisors by the applicant's agent as to why this section of County Code is not explicit about whether "additions" refers to vertical additions or horizontal additions. Additionally, the applicant's agent checked with Building Department staff as to the application of the Zoning Ordinance setbacks and was provided with information at the counter which supported a position that the setbacks are only applied to horizontal expansion.
6. Information was presented by the applicant's agent, and confirmed by planning staff regarding two building permits issued for vertical expansions of legally existing structures located in the setback area in 1994.
7. Information was presented at the public hearing by the applicant's agent regarding Building Permit No. 22862 issued in 2004 for an existing residential structure located in the setback area. At the public hearing, the agent submitted the Planning Approval forms and excerpts from the building permit plans. The Planning approval form "Job Description" reads "remodel existing - Remove & Replace Bed/Bath" and the Planner's sign-off comments read: "Interior remodel; *any addition must be 12.5' from nearest property line." The Planner made the following written request on the face of the Planning Approval form: "Please note on Permit: Any exterior additions must comply with setbacks." While the building permit plans show a vertical expansion of an existing residence, testimony was made at the public hearing by planning staff that the building permit plans are not routinely submitted to the planning department for their review. The building department submits to the Planning Department the Planning approval form and a site plan. The planner may review additional information if he or she determines it to be necessary based upon the job description information and the site plan. Based on the information presented at the public hearing, it is not conclusive that the planner who signed off on the building permit was aware that the project included a second story addition to the existing structure.
8. Based on the new structure having been rebuilt in the same footprint as the previous structure and not expanded horizontally to further encroach into the existing two foot side yard setback, and since there was confusion about and a lack of clarity regarding the Zoning Ordinance setback standards, this particular

structure that replaced the original structure on-site can be found to meet the County Code requirements for setbacks. An amendment to this section of County Code is necessary to clarify the applicability of setbacks to horizontal and vertical expansions of an existing structure which is legally located in the setback area.

9. County Code Section 17.08.020 entitled Nonconforming uses only applies to uses which are non-conforming to County Code and not necessarily to structures which are non-conforming to County Code. An amendment to this section of County Code is necessary to add specific provisions for nonconforming uses.

10. Planning is authorized to sign off on a building permit application for the subject structure.

BE IT FINALLY RESOLVED THAT Appeal No. 2010-175 is hereby abrogated since this particular structure meets current County Code requirements and therefore no variance is necessary. A building permit may be authorized by the Planning Department when found to be in compliance with all other requirements for authorization of a permit.


ON MOTION BY Supervisor Cann, seconded by Supervisor Stetson, this resolution is duly passed and adopted this 7th day of June 2011 by the following vote:

AYES: STETSON, TURPIN, CANN, ALLEN

NOES: BIBBY

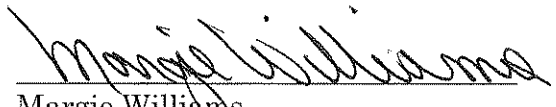
EXCUSED: NONE

ABSTAIN: NONE



Jim Allen, Chairman
Mariposa County Board of Supervisors

ATTEST:



Margie Williams
Clerk of the Board of Supervisors

APPROVED AS TO LEGAL FORM:



Steven W. Dahlem
County Counsel