



Planning and Building Division

**County of San Mateo**

Mail Drop PLN122 · 455 County Center · 2nd Floor · Redwood City  
California 94063 · Telephone 650/363-4161 · Fax 650/363-4849

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Terry L. Burnes

June 7, 2000

Chuck Kozak, Chair  
Planning and Zoning Committee  
MidCoast Community Council  
Post Office Box 370702  
Montara, CA 94037

Dear Chuck:

SUBJECT: Design Review approval, 1134 Columbus, PLN1999-00707 (Scherer)

This is in response to your April 5 letter on this topic. I apologize for the delayed reply. You ask two questions: (1) what, if any recourse is left on this project and (2) what can be done to prevent a recurrence of the problems you describe in your letter?

I have reviewed this case with Lily Toy, the project planner, and with Mike Murphy, Chief Deputy County Counsel. We also received correspondence from Mr. Scherer, the applicant.

Our conclusion is that the proper notification procedures were followed, the appeal period expired without an appeal having been filed and the permit is therefore approved. There is no recourse other than litigation.

I believe this type of situation will largely be prevented from recurring when we have a design review committee in place later this year. There will be a noticed public hearing at a set time and place on any new house where input can be provided, problems can be negotiated and decisions reached with all interested parties present and a clear understanding that persons dissatisfied with those decisions must appeal them to the Planning Commission. Pending the establishment of the committee, I have asked Lily Toy to be sure that you are informed of all significant revisions to design review applications made subsequent to your initial response to our referral.

The essence of your position seems to be that greater coordination between our office and yourself, as Chair of the MCCC Planning and Zoning Committee, might have avoided an outcome which you find unfortunate, where the applicant has obtained approval for a house to which the neighbor has some objections and all opportunities to negotiate a solution were not exhausted before the appeal period ended. We don't disagree with your central point. It is possible that further negotiations between P&Z, the applicant and the neighbor might have resulted in a more acceptable design.

However, please bear in mind that the applicant generally has an interest in a timely decision on his project. In this case, there were four revision cycles between the initial filing of the application (and its referral to the MCCC) and the decision, stretching over four months. I realize

that some of this delay was no doubt the applicant's "fault," but once Lily had obtained what she saw as an acceptable revision, she felt the applicant deserved a timely decision and she issued that.

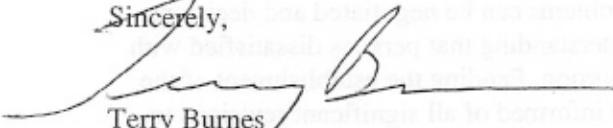
Copies of the decision went to the MCCC P&Z Committee, to the interested neighbor and to the applicant. The decision letter clearly stated the appeal deadline and the neighbor has acknowledged receiving that. There was apparently some expectation in the community that the appeal deadline could be deferred, though Lily had made it clear that it could not. In the future I would recommend that anyone contemplating an appeal should err on the side of filing one, if simply to preserve their right to an appeal hearing. If they subsequently resolve their issues through further negotiations with the applicant or the County, the appeal can be withdrawn.

I think some of the confusion in this case and similar situations results from the vagueness of a strictly administrative notice, input, decision and appeal process which is conducted through the mail and via telephone and e-mail. Once a design review committee is established, there will be an actual hearing where all interested parties will convene before a decision is reached and I think there will be less opportunity for miscommunication and misunderstanding.

As I said above, in the meantime, we (Lily) will provide you with notice of significant revisions received subsequent to your response to our initial referral of a design review application. I must request that you bear in mind the deadlines to which this process is subject in our regulations and the desire of most applicants for a timely decision, especially after revising their project to address identified concerns. So, Lily will need a quick reply with your input on the revision. As I have suggested in the past, the MCCC and P&Z need to delegate authority for input on projects like this following the initial referral so that they can be handled efficiently and without convening formal meetings unless those can be fit in without delaying action here.

We very much appreciate the input we receive from you, the P&Z Committee and the MCCC and believe that communication and cooperation have improved over the past few months. I hope this letter addresses your concerns about this project and others like it. If not, please call me at 363-1861 so we can discuss it. Thank you.

Sincerely,



Terry Burnes  
Planning Administrator

TB:kdr

cc: Supervisor Rich Gordon  
Lily Toy, Project Planner  
Michael Murphy, Chief Deputy County Counsel  
Don Scherer, applicant  
Robert Kosut, neighbor

April 5, 2000

To: Terry Burnes  
Planning Administrator  
Environmental Services Agency  
Planning & Building Division - PLN 122  
455 County Center, 2nd Floor  
Redwood City, CA 94063

re: Staff Approval of redesign of PLN1999-00707 at 1134 Columbus, El Granada  
(APN 047-275-410)

Dear Terry:

I'd like to bring to your attention what I see as an unfortunate set of circumstances that raise some significant issues concerning timely community review of proposed new development. This situation has developed in the case of the above referenced application, but I can easily imagine this happening again with other proposals.

The parcel in question is quite steep - 57% by my calculation along the length of the proposed house site. The topography of the area is critical - the land rises at a fairly gentle slope up from the west, until it gets about half way between Francisco and Columbus, at which it point it rises very quickly up to Columbus and the streets above. Many of the houses on Francisco that sit below this parcel are single-story homes on relatively flat lots.

The house proposal that was originally referred to the MCC P&Z Committee was extremely large - 3671 sf (an equivalent FAR of 69% on its 5317 sf lot) and tall - the rear wall, which would be seen from Francisco and the streets below, was 50 ft. high. This so fit the classic "monster house" description, and was such an extreme example of height measurement by averaging on slopes, that I used it as an example during the discussions about height measurement techniques at the MidCoast Zoning Ordinance Study Group meetings.

We received the original application referral in January. Only a reduced set of plans was included - Lily Toy had included a note that no extra full-size set had been given to her. As I was at the County buildings later that week, I stopped in to see the full-sized drawings and talk with Lily about them. At that time, she stated that the design had problems with its mass and height, and she was going to ask the applicants to do a redesign.

With this in mind, the P&Z committee reviewed the project as submitted at our regular meeting of February 2, 2000. A copy of our comment letter of 2/9/00 is included. Please note that we specifically requested: *"Because of the significant issues of size and design, we would like to re-review this project after any design changes before we could recommend approval."* At this point, we assumed (mistakenly, it turns out) that any significant redesign would be resubmitted for our review.

On Wednesday, April 12, I received a notice, dated April 11 that the application for this house was being approved, and that the period for appeal would end on April 26. I called Lily the next day (Thursday), and learned that she had worked quite a bit with the applicant to redesign the house. When I asked why the project had not been referred again to the P&Z Committee, she said that design revisions were generally not referred a second time. I asked her to please send a copy of the revised plans, as I was very interested to see how it had changed.

On Tuesday of the following week (April 18), I received a set of reduced plans that were copies of a FAX. Any pertinent dimensions were illegible. As the following evening was our regular P&Z meeting, we discussed this situation as an emergency item, and voted to write Lily asking that the approval be postponed so that the revised project could be reviewed at our next meeting with proper notice given to the applicant and the surrounding neighbors. I Faxed the letter that night (attached also), and emailed a note to Lily alerting her to the letter. Her response the next day was that the approval could not be withdrawn, and that she was sending full sized plans she had received immediately so that any concerned neighbors could review them before the appeal period ran out. I received those plans Saturday, April 22. As it was Easter weekend, it wasn't until the following Monday that I was able to contact the concerned neighbors and drop off the plans for them to review. With less than two days to the close of the appeal period, they were unable to come to any conclusion about whether to file an appeal (and not having ever filed one before, or having the time to schedule time off work to go down to Redwood City to fill out the forms, they were somewhat reluctant to do so on such short notice.)

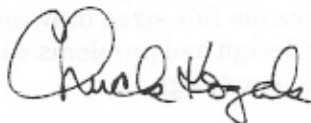
This is not meant to be critical of the way Lily is doing her job - she did what she could within the time constraints and her busy workload to get what information she could to us. But now I worry that some of the neighbors may be looking into what legal options they have, which could be messier than an appeal.

My point is, with an obviously potentially controversial (and likely to be appealed) project like this one, I would much rather work to make sure that all concerned know what is happening and what is finally being approved. In this case, the regular procedures and the timing has worked to the disadvantage of the community. I don't believe the resultant house will be very welcome in the neighborhood.

So the questions are: (1) what, if any, recourse is left on this project aside from legal action, and (2) what can we do to prevent this from happening again?

I appreciate your time and attention to this matter, and look forward to your response.

Respectfully,



Chuck Kozak, MidCoast Community Council Planning & Zoning Committee Chair  
POB 370702, Montara CA 94037  
Home: Voice/FAX: 650.728.8239 - Days: 650.678-0469

cc: Supervisor Rich Gordon  
Design Review Officer Lily Toy  
MidCoast Community Council