

ANTHONY LOMBARDO & ASSOCIATES
A PROFESSIONAL CORPORATION

ANTHONY L. LOMBARDO
KELLY MCCARTHY SUTHERLAND
JOSEPH M. FENECH
CODY J. PHILLIPS
SHERYL A. FOX
DEBORAH M. CASTLES

144 W. GABILAN STREET
SALINAS, CA 93901
(831) 751-2330
FAX (831) 751-2331

October 8, 2024

File No. 4822.000

Michael LePage, Chair
Planning Commission
City of Carmel-by-the-Sea
P.O. Box CC
Carmel-by-the-Sea, CA 93923

Re: Request for Reconsideration (Fountain/DR 16-384)

Dear Chair LePage and Members of the Planning Commission:

Our office represents Thomas and Kristin Fountain in their request for the extension of the permit to develop a small 840 square foot building on the vacant lot they own on 8th Avenue. Your commission approved the extension on September 11, 2024. After the hearing, Victoria Beach, a longtime opponent of the Fountains, requested that the Planning Commission reconsider the approval of the extension based on unspecified “new information”.

Commissioner Allen subsequently submitted the request for reconsideration on Ms. Beach’s behalf. However, based on the information that has been submitted there is no basis to reconsider your approval of the extension of this permit. We respectfully request that you do not vote to reconsider the extension of the Fountains’ permit.

Standards for Permit Extensions

It is important to keep in mind what the City standards are for the approval of the extension of the Fountains’ permit. Carmel Municipal Code Section 17.52.170 (Time Extensions) contains the standards for granting extensions:

... the Planning Commission, or Historical Preservation Board, as appropriate, may administratively grant one extension for approvals originally subject to a public hearing. If, since the date of the original approval, 1) the conditions surrounding the original approval have changed, or 2) the General Plan, municipal code or Local Coastal Plan Program has been amended in any manner which causes the approval to be inconsistent with these plans or codes, no time extension or renewal shall be granted for any approval.

Neither “the conditions surrounding the original approval nor the general plan, municipal code, or Local Coastal Plan has been amended”. Therefore, there is no basis for a denial of the extension request and, as a result, there is no basis for the Commission to reconsider its approval of the extension. None of the reasons articulated by Commissioner Allen are reasons to deny the extension under the municipal code.

Standards for Reconsideration

Not only are there no facts that would allow the Commission to deny the extension, there are no grounds to support even the request for reconsideration. Section II(A) of the Carmel Planning Commission's Rules of Procedure provides that, "Except as otherwise stated in these Rules of Procedure or Municipal Code, Roberts Rules of Order, Newly Revised shall be used as a guide to the conduct of the meetings of the Planning Commission." Roberts Rules of Order §37 provides:

[Reconsideration]—...The purpose of reconsidering a vote is to permit correction of hasty, ill-advised, or erroneous action, or to take into account added information or a changed situation that has developed since the taking of the vote.

In this case, the reconsideration request was submitted at Ms. Beach's insistence, however there is no "added information" or "changed situation" identified in the request for reconsideration that has developed since the Planning Commission approved the extension on September 11th (which is a requirement for reconsideration). Similarly, no evidence was provided that the Commission's approval of the extension on September 11 was "hasty, ill-advised, or erroneous". To the contrary, the item was properly noticed for ten days prior to the hearing, providing both the Commissioners and the public ample time to respond. This is especially true for Ms. Beach who could not have missed the public notice because she walks up and down in front of the project site trampling the landscaping planted in the 8th Avenue right of way. The staff report contains a detailed and accurate description of the project and the extension, and there are no grounds for the denial of the extension per the standards of Roberts Rules of Order as adopted by the Carmel Municipal Code.

Request For Reconsideration

In a series of emails from Commissioner Allen to City staff, the following reasons were given for the request for reconsideration:

1. The project is not eligible for a CEQA exemption because it may cause a substantial adverse change in the significance of the three historical resources in the vicinity (Sunset Center, Dance Studio, Scout House). *Presumably Ms. Beach is asking that an environmental impact report be prepared prior to the approval of the extension because of the "impact" this 840 square foot building will have on the Sunset Center, located over 600 feet away, the Scout House or Dance Studio (if the building is historic). This is patently an absurd premise which is not consistent with reality or California law. Small structures such as these are categorically exempt from consideration under the California Environmental Quality Act (CEQA guideline §15303) (see also. Berkeley Hillside Pres. v. City of Berkeley, 60 Cal.4th 1086, 184), and it would be illegal for the City to require the preparation of further environmental analysis for the extension of this permit. Remember only this year your Commission unanimously approved the construction of the Hofsas Legacy Hotel project directly adjacent to the Donna Hofsas historic home on a categorical exemption but Ms. Beach feels that the extension of a permit to construct a fully conforming 840 square foot mixed use building on a vacant lot of record requires an EIR because of impacts to historic resources! There is no factual or legal justification for reconsideration of your approval of the extension on these grounds.*

2. The project is inconsistent with the project approved on the property in 2003. *This is in fact also not correct. In 2003, the City approved an 840 square foot residential structure on this vacant parcel and included a condition as follows:*

“No business activities shall be permitted on either lot unless a permit amendment is submitted and approved by the City prior to establishment on the premises. Any future applications to conduct commercial activities on either lot in the future will be reviewed for the proposals’ impact on off-street parking, floor area ratio, coverage and the pertinent dimensional and design standards for the RC District.”

The Fountains followed the exact process required by this condition and obtained approval for a revised building design. After a decade of opposition from Ms. Beach, the Fountains were finally able to obtain approval for this very small mixed-use building on their lot as required by condition 3 of the original 2003 approval. Once again, there is absolutely no evidence in the record which would support either reconsideration or denial of this extension.

Future Construction of a Sidewalk on the North Side of 8th Avenue.

This is the real reason for Ms. Beach’s request for reconsideration. For a decade, Ms. Beach has attempted to force the City to force the Fountains to abandon an encroachment permit for a small side yard and fence that the original builder of their existing home obtained from the City of Carmel. After a decade of dealing with the disappearance of the original encroachment permit from City records and a demand by Ms. Beach and other former City officials that the Fountains design and construct a sidewalk on the north side of 8th Avenue, the City Council made a final decision to reissue the missing encroachment permit on condition that the Fountains landscape and maintain (irrigate) the steep sidehill between 8th and their existing home. There is nothing about the permit before you that involves the Fountains existing home, the encroachment permit or the sidewalk. The project on the vacant lot and does not encroach onto the 8th Avenue right of way.

As described in prior correspondence provided to you, there is no likelihood that a sidewalk would be built adjacent to this vacant lot as it would violate ADA standards and is unnecessary because the former owner of the Fountain’s home constructed a pathway on the south side of 8th Avenue in consideration of the City’s abandonment of plans to build a sidewalk on the north side of 8th Avenue and granting an encroachment permit for the construction of the side yard and fence.

Damage to Landscaping

After the City Council granted the replacement encroachment permit conditioned on the installation of landscaping on the remainder of the 8th Avenue right of way adjacent to their home, the Fountains installed thousands of dollars of landscaping and irrigation on the City’s right of way only to have that irrigation system and landscaping trampled and vandalized. After this occurred twice, the Fountains placed a Ring camera on their home which has recorded one individual walking back and forth damaging the landscaping (see attached photos) and that person clearly appears to be Victoria Beach.

Michael LePage, Chair
Planning Commission
October 8, 2024
Page | 4

While Ms. Beach apparently cannot accept the decision by the Planning Commission and City Council to redirect pedestrian traffic to the south side of 8th Avenue, her refusal to accept the fact that a sidewalk cannot be legally constructed on the north side of 8th Avenue is not grounds for reconsideration.

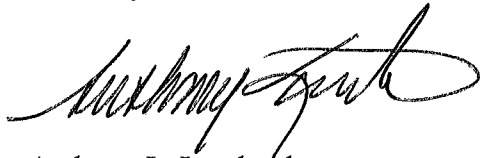
Conclusion

The Fountains have been harassed by Ms. Beach since she appeared at their home 10 years ago and informed them the City was going to build a sidewalk in their side yard. She apparently has great difficulty accepting the fact that this is not going to happen to the point where she feels it necessary to march up and down damaging the landscaping planted to beautify and prevent erosion on the steep hillside of the City right of way.

There is no legal or factual basis to reconsider your approval of the extension of the approval of the 840 square foot building.

The Fountains respectfully request that the Commission not vote to reconsider the extension of their permit in furtherance of Victoria Beach's efforts to prevent them from using their property.

Sincerely,



Anthony L. Lombardo
Enclosures

cc: Chip Rerig, City Manager
Brandon Swanson, Community Planning & Building Director
Marnie Waffle, Planner



06/10/2024 15:54:37 PDT

img



0:00:00

Ring 6-10-2024 1802



0:00:25

06/10/2024 18:03:02 PDT



ring

06/16/2024 12:57:51 PDT

Type here to search



80°F Sunny 2:37 PM 10/7/2024



06/20/2024 08:51:20 PDT

img



Ring 7-09-2024 1648

ring



07/08/2024 16:48:38 PDT

USD/CAD +0.25%



Type here to search





07/25/2024 18:26:56 PDT

15-2024-1007





09/15/2024 10:07:17 PDT

00:04



Type here to search



80°F Sunny 2:30 PM 10/7/2024

