



STAFF REPORT

TO: PLANNING COMMISSION

PREPARED BY: Anjana Mepani, Associate Planner

REVIEWED BY: Terry Blount, AICP, Planning Manager

GENERAL INFORMATION

OWNER/APPLICANT: Teresa Elliott

APPELLANT: Ron & Carolyn Glover, Michael & Patricia Fotheringham, Judith Rowan, and John Walker

LOCATION: 1401 Linton Terrace (APN 155-360-024-6)

PROPOSAL: Public hearing on an appeal of the approval decision of the Zoning Administrator for Use Permit #10-07. The Zoning Administrator approved the applicant's request for Use Permit approval to allow additions to an existing cottage and an existing garage within the rear yard of 1401 Linton Terrace.

GENERAL PLAN: Hidden Lakes Specific Area Plan: Residential Slope Density Ordinance (SDO)

ZONING: R-20 (One-Family Residential: 20,000 square feet minimum lot area)

ENVIRONMENTAL REVIEW: Staff proposes that the Planning Commission find that this permit be categorically exempt (Class 1 - Section 15301, Existing Facilities and Class 3 - Section 15303, New Construction or Conversion of Small Structures) from the requirements of CEQA. If the Planning Commission adopts this proposed finding, no further environmental review would be required by State law.

RECOMMENDATION

Deny appeal, uphold the Zoning Administrator's approval decision, find the proposed project categorically exempt from the requirements of CEQA, and grant approval of Use Permit #10-07.

BACKGROUND

The applicant is proposing to construct additions to an existing 710 square foot cottage and an existing 1,260 square foot garage in the rear yard of an existing residence. The existing structures are located on a large 2.35 acre residential lot at 1401 Linton Terrace. The 659 square foot cottage addition would include a new bedroom, an expansion of the enclosed porch, and would have a height of 17 feet-2 inches, matching the current cottage height. The applicant is making these changes to the cottage so that her mother can reside independently and comfortably near her in a single-story space. The 654 square foot garage addition would be used for storage space and would have a height of 17 feet-6 inches, matching the existing garage height. It should be noted that the existing residence would not be altered.

The proposed additions to the cottage and garage include materials to match the materials and colors of the existing structures. The materials of the proposed additions include wood siding, and asphalt and composite roof shingles that will match the existing structures. The proposed project site is a large lot in the R-20 zoning district and is surrounded by single-family residences, many of which are also on large lots.

DISCUSSION

Use Permit: The subject property is located in the R-20 zoning district. Pursuant to Martinez Municipal Code Section 22.12.265 (B)(1), Use Permit approval is required to allow Accessory Structures over 1,000 square feet and where the aggregate of all Accessory Structures on a lot exceed 50% of the gross floor area of the main structure. Similarly, pursuant to Section 22.12.265 (B)(2), Use Permit approval is also required for Accessory Structures exceeding 15 feet in height.

In the present case, the proposed additions to the existing cottage and garage on the project site require a Use Permit for several reasons. First, the addition of 659 square feet to the cottage and 654 square feet to the garage will result in each structure exceeding 1,000 square feet. The final size of the cottage as proposed will be 1,369 square feet and the final size of the garage, as proposed will be 1,914 square feet. Second, the total combined size of both Accessory Structures with the additions would exceed 50% of the main structure's gross floor area. The gross floor area of the main structure on the subject property is 5,104 square feet. With the proposed addition to the cottage and the garage, the combined total gross floor area of the two structures is proposed to be 3,283 square feet. The proposed additions to the cottage and garage would thus total 64% of the main structures gross floor area. Due to the accommodations of a large lot and the placement of the structures at the rear of the lot, the overage is not out of character. In addition, the existing height of the both the cottage and garage are currently above 15 feet and the height of the additions is proposed to match the existing heights of the two structures. The proposed height of the cottage is 17'-2" and the proposed height of the garage is 17'-6".

Zoning Compliance for the Proposed Project: The following table provides a broad overview of how the Accessory Structure zoning code requirements apply to the proposed cottage and garage additions with respect to height, minimum property line

setbacks, and other development standards. Conformity of the proposed project with the zoning code and whether a Use Permit is required is indicated in the last column of the table.

CRITERIA (DEVELOPMENT STANDARDS FOR ACCESSORY STRUCTURES, APPLICABLE IN THE R-20 ZONING DISTRICT)	MINIMUM REQUIRED OR (MAXIMUM ALLOWED)	PROPOSED COTTAGE	PROPOSED GARAGE	CONFORMITY
Building Height	15'/Single story	17'-2"/Single story	17'-6"/Single story	Use Permit Req'd.
Building Size	(1,000 sq. ft.)/(50% of main structures gross floor area*)	1,369 sq. ft./64%**	1,914 sq. ft./64%**	Use Permit Req'd.
Rear Property Line Setback	5 feet	10.75 feet	8.23 feet	Yes
Side Property Line Setback	5 feet	21.73 feet	220.15 feet	Yes
Site Coverage (MIN. REQ. REAR YARD)	(25%)	14%		Yes
Site Coverage (WHOLE LOT)	(25%)	8%		Yes

* The total size of all Accessory Structures on a lot cannot exceed 50% of the main structures gross floor area without a Use Permit

** Together the proposed cottage and garage additions will total 64% of the main structures gross floor area

Zoning Administrator Hearing: The Zoning Administrator approved the applicant's request for a Use Permit to allow additions to an existing cottage and an existing garage within the rear yard of 1401 Linton Terrace at a publicly noticed hearing on November 3, 2010. The Zoning Administrator's decision was based on the record as whole, including the information contained in the staff report, attachments, exhibits, public testimony, and evidence (three letters) submitted at and before the hearing.

At the hearing, the Zoning Administrator took public testimony from the applicant, applicant's contractor and engineer, and four neighbors. No objections were raised regarding the Use Permit or the heights and sizes of the cottage and garage at the meeting or in the letters received. Further, the neighbors did not have issues with the design of the buildings themselves. At the hearing it was clarified that the conditioned space of the cottage will meet the second unit requirements in relation to Martinez Municipal Code Section 12.22.085 (C)(3) and that the plans would clearly label conditioned vs. unconditioned space.

However, at the hearing and in the letters received, concerns were expressed with parking in the cul-de-sac/Linton Terrace bulb, use of the right-of-way, access and the gate at the rear of the property, and the properties garbage pick-up location. It should be noted that when this Tract 4702 was subdivided the abutter's rights along Linton Terrace bulb were not seceded for the subject property. Thus, the applicant has a dual

frontage lot and has the right to access the property from both Linton Terrace and the Linton Terrace bulb. Further, the garbage pick-up for the subject property has occurred from the Linton Terrace bulb for over a decade.

Based on the comments received and discussion at the hearing the Zoning Administrator added three conditions of approval to the project. The conditions are as follows:

- The cottage's porch area, labeled as "existing" and "new" on the plans shall be unconditioned space. The conditioned space of the cottage shall be approximately 800 square feet, conforming to the City of Martinez Second Unit Ordinance maximum size limitation (Ord. 1312 C.S. § I 2004, MMC 22.12.084).
- Building permit plans shall provide accurate survey of Linton Terrace bulb, showing relationship of edge of pavement, fence, property line, and cottage at the rear of 1401 Linton Terrace.
- As part of the building permit plans, boulders or similar features, subject to approval of the City Engineer, shall be placed between the fence at the rear of 1401 Linton Terrace and Linton Terrace bulb to preclude parking in the right-of-way. Parking for the cottage's residents and guests shall be provided on-site.

Since the Zoning Administrator hearing the applicant has made changes to the plans and to the extent possible has addressed the neighbors' comments and concerns. The revised plans also incorporate the above conditions of approval. The plans have been revised to show the conditioned and unconditioned spaces of the cottage and clearly show the Linton Terrace bulb location with the relation to the edge of pavement, property line, and cottage. New to the plans is the addition of a driveway from the Linton Terrace bulb to accommodate on-site parking for the cottage. The new driveway will eliminate the cul-de-sac parking matter.

Appeal Filed: The appellants submitted an appeal of the Zoning Administrator's decision on November 15, 2010 with an appeal letter. The following bullet points address items from the appellant's appeal letter.

➤ **Appeal Issue #1**

Claim: "The conditions of approval are vague and unclear, allowing for potential future abuses of intended Zoning Administrator provisions."

Response: The conditions of approval for the proposed project are clear, specific, detailed, and are logically related and proportional to the project. The conditions of approval for this project consisted of standard conditions of approval plus the three conditions of approval added by the Zoning Administrator. The standard conditions of approval relate specifically to the proposed project and subject property. The three conditions of approval added by the Zoning Administrator were drafted at the hearing to address concerns and issues brought up by the neighbors.

➤ **Appeal Issue #2**

Claim: "Significant issues were raised by the both the Applicant and neighbors during the hearing that were not addressed in the conditions of approval."

Response: The issues brought up at the Zoning Administrator hearing included concerns regarding parking in the cul-de-sac, use of the right-of-way, access and the gate at the rear of the property, and the properties garbage pick-up location. Overall, the main issue discussed was regarding the parking in the cul-de-sac, also referred to as the Linton Terrace bulb. The following condition was added by the Zoning Administrator to address this issue: *"As part of the building permit plans, boulders or similar features, subject to approval of the City Engineer, shall be placed between the fence at the rear of 1401 Linton Terrace and Linton Terrace bulb to preclude parking in the right-of-way. Parking for the cottage's residents and guests shall be provided on-site."* It should be noted that no significant concerns and issues were raised about the Use Permit or regarding the additions, heights, and sizes of the Accessory Structures. The neighbors did not have issues with the design of the buildings for the proposed project.

➤ **Appeal Issue #3**

Claim: "The decision and conditions of approval are inconsistent with statements by the Applicant at the November 3 hearing, and thus unsupported by the evidence in the record."

Response: The Zoning Administrator's decision was based on the record as whole, including the information contained in the staff report, attachments, exhibits (project plans), public testimony, and evidence (three letters) submitted at and before the hearing. The conditions of approval relate specifically to the subject property and proposed project, as depicted on the project plans for the Use Permit provided by the applicant. Further, there was adequate support for the findings made for the Use Permit. It is unclear what "statements by the Applicant" the appellant believe are inconsistent with the decision and conditions of approval and no specifics are provided in the appeal.

➤ **Appeal Issue #4**

Claim: "The decision and conditions of approval were based on inaccurate information provided by the applicant. Thus, the Zoning Administrator was not able to make an informed decision based on the presentation of complete and accurate evidence."

Response: As mentioned above, the Zoning Administrator's decision for the Use Permit request was based on the record as a whole, findings, and the conditions of approval that specifically relate to the proposed project plans submitted by the applicant. The appellant has provided no information as to what information is believed to be "inaccurate."

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) COMPLIANCE

Staff proposes that the Planning Commission find that this permit be categorically exempt under Class 1 - Section 15301, Existing Facilities and Class 3 - Section 15303, New Construction or Conversion of Small Structures from the requirements of the California Environmental Quality Act (CEQA). The proposed project is categorically exempt from the requirements of CEQA, under Section 15301 because the proposed project involves repair and minor alterations of existing private structures with negligible expansion of an existing use, and Section 15303 because the proposed project, with the Accessory Structure additions involves construction with minor modifications to the exterior of the structures.

USE PERMIT FINDINGS

In order to deny the appeal, uphold the Zoning Administrator's approval decision, and approve the Use Permit application #10-07 to allow exceptions to the normally permitted height and size of Accessory Structures, the Planning Commission must make the following findings (in bold below):

- (a) The proposed location of the conditional use is in accord with the objectives of the zoning code, and the purposes of the district in which the site is located.**

Facts in Support of Finding: The Zoning Ordinance at Title 22, "Zoning" provides at §22.02.010 that Title 22 is adopted to "protect and promote the public health, safety, peace, comfort, convenience, prosperity and general welfare of the public..." Section 22.02.010 lists specific objectives, including the following:

- A. To implement the objectives of the General Plan in all its elements...to guide, control and regulate the maintenance, change, growth and development of the City.
- B. To foster a harmonious, convenient, workable relationship between land uses.
- C. To promote the stability of existing land uses which conform to the General Plan and to protect them from inharmonious influences and harmful intrusions.

The General Plan designation for the Project is Hidden Lakes Specific Area Plan: Residential Slope Density Ordinance. The General Plan provides for residential development in the area of the Project. The Project consists of additions to two existing residential Accessory Structures, and will not alter the stability of existing land uses on the site. Since the existing cottage does not have on-site parking, the new driveway will permit on-site parking, thus addressing neighbor's concerns and making the cottage and the overall Project more fitting, compatible, and functional. Further, the Accessory Structures are an important component of the residential experience afforded

to the property owner and/or user of the Project Lot. The Project will be consistent with the General Plan, the Hidden Lakes Specific Area Plan, and the goals, policies and directions for residential development set forth above.

The purposes of the R - Residential Districts, including the R-20 District, are set forth in the Zoning Ordinance at Title 22, Chapter 22.12 "Residential Districts." These purposes include the following:

- A. Reserve appropriately located areas for residential living in a variety of types of dwellings, at a reasonable range of population densities consistent with sound standards of public health and safety.
- B. Ensure adequate light, air and privacy for each dwelling unit.
- C. Provide adequate amounts of private open space in proximity to each dwelling unit.

The intent of "Accessory Structures," is set forth in the Zoning Ordinance at Title 22, Section 22.12.265.A. "Accessory Structures" are intended to ensure adequate light, air, and privacy for residential properties, balancing the appropriateness of the accessory structures' design to preserving the residential character and neighbor's privacy with the applicant's ability to fully utilize the property in accordance with all applicable standards of the City's zoning regulations. Further, Title 22, Section 22.04.530 define "Accessory Structures" as an attached or detached subordinate structure, which is, subordinate in size and incidental to the use of the main structure or the main use of the land, and which is located on the same site with the main structure or use. Examples of detached accessory structures include secondary housing units and garages, as is proposed for the Project.

The Project proposes to construct additions to an existing 710 square foot cottage and an existing 1,260 square foot garage in the rear yard of an existing residence. The 659 square foot cottage addition would include a new bedroom, an expansion of the enclosed porch, and would have a height of 17 feet-2 inches, matching the current cottage height. The applicant is making these changes to the cottage so that her mother can reside independently and comfortably near her in a single-story space. The 654 square foot garage addition would be used for storage space and would have a height of 17 feet-6 inches, matching the existing garage height.

The proposed additions to the Accessory Structures with the proposed heights and sizes are consistent with the purposes of the R-20 District and the intent and definition of "Accessory Structures." The Project will be for residential use, and will not add any uses inconsistent with such residential use. As mentioned above the proposed additions to the Accessory Structures will be used as a secondary housing unit and storage. The proposed uses for the Accessory Structures will remain incidental to the existing residence on the site.

Moreover, the proposed additions to the Accessory Structures will not have adverse effects on the light, air and privacy of neighboring properties and owners of such properties. This is so because of where the Accessory Structures are located on the large, 2.35 acre Project site. The proposed Project meets the rear and side property line setbacks, as well as site coverage requirements.

The new driveway will help bring the existing cottage into conformance with parking regulations under the Zoning Ordinance at §22.12.085.C.4. Currently, the existing cottage does not have an on-site parking space. The new driveway will ensure that adequate on-site parking is provided for the cottage's residents and guests.

Further, the proposed additions to the cottage and garage will match the materials and colors of the existing structures. The materials of the proposed additions include wood siding, and asphalt and composite roof shingles that will match the existing structures. The proposed Project is designed to be subordinate to the existing residence on the lot, to preserve the residential character of the area and to match the style of the existing structures, as well as to fit in with the adjacent homes and garages on Linton Terrace and the surrounding neighborhood.

- (b) The proposed location of the conditional use and the proposed conditions under which it would be operated or maintained will not be detrimental to the public health, safety or welfare, or materially injurious to properties or improvements in the vicinity.**

Facts in Support of Finding: The proposed location of the Project and the additions of the Accessory Structures will not have impacts on or be detrimental to, the public health, safety and welfare. The Project will continue the ancillary uses of the cottage and garage, and there will be no new uses on the site. The new driveway will help ensure that parking for the cottage is on-site and that no parking impacts occur.

The proposed construction areas for the additions to the cottage and garage on the Project site are relatively flat. The large 2.35 acre Project lot, the relatively flat lot, and location of the Accessory Structures at the rear of the Project site prevents the structures' heights and sizes from negatively impacting surrounding residences. The height, mass and scale of the structures will remain in harmony with the existing neighborhood. Further, the existing height of the both the cottage and garage are currently above 15 feet and the height of the additions will not exceed the current heights. The 659 square foot cottage addition would have a height of 17 feet-2 inches, matching the current cottage height and the 654 square foot garage addition would have a height of 17 feet-6 inches, matching the existing garage height.

For the foregoing reasons, the proposed Project will be consistent with surrounding uses and thus will not be detrimental to public health, safety or welfare, or be materially injurious to properties or improvements in the vicinity.

(c) The proposed conditional use will comply with each of the applicable provisions of Title 22 of the Martinez Municipal Code.

Facts in Support of Finding: With the exception to building height and size, the Project complies with all other applicable provisions of Title 22 - Zoning of the Martinez Municipal Code, including requirements for rear property line setbacks, side property line setbacks, site coverage for the minimum required rear yard, site coverage for the whole lot, and the development standards, as adjusted with the subject Use Permit approval, of the R-20 zoning district and the intent and definition of "Accessory Structures."

CONCLUSION

Based on the above, staff recommends that the Planning Commission approve the proposed project and Use Permit #10-07, subject to the attached draft resolution containing the necessary findings and draft conditions of approval prepared for Planning Commission approval.

ATTACHMENTS

- A. Site Context Map
- B. Aerial Image
- C. Conditions of Approval [DRAFT] (Exhibit A)
- D. Resolution No. PC 11-02
- E. Appeal Letter
- F. Applicant Letter
- G. Zoning Administrator Approval Letter, Staff Report, and Conditions of Approval
- H. Neighbor Letters submitted to the Zoning Administrator
- I. Pictures taken by Staff in November 2010

EXHIBITS

Site Plan, Driveway Plan, Floor Plans, Elevations, Sections, and Notes
Central Contra Costa Sanitary District Sewer Map

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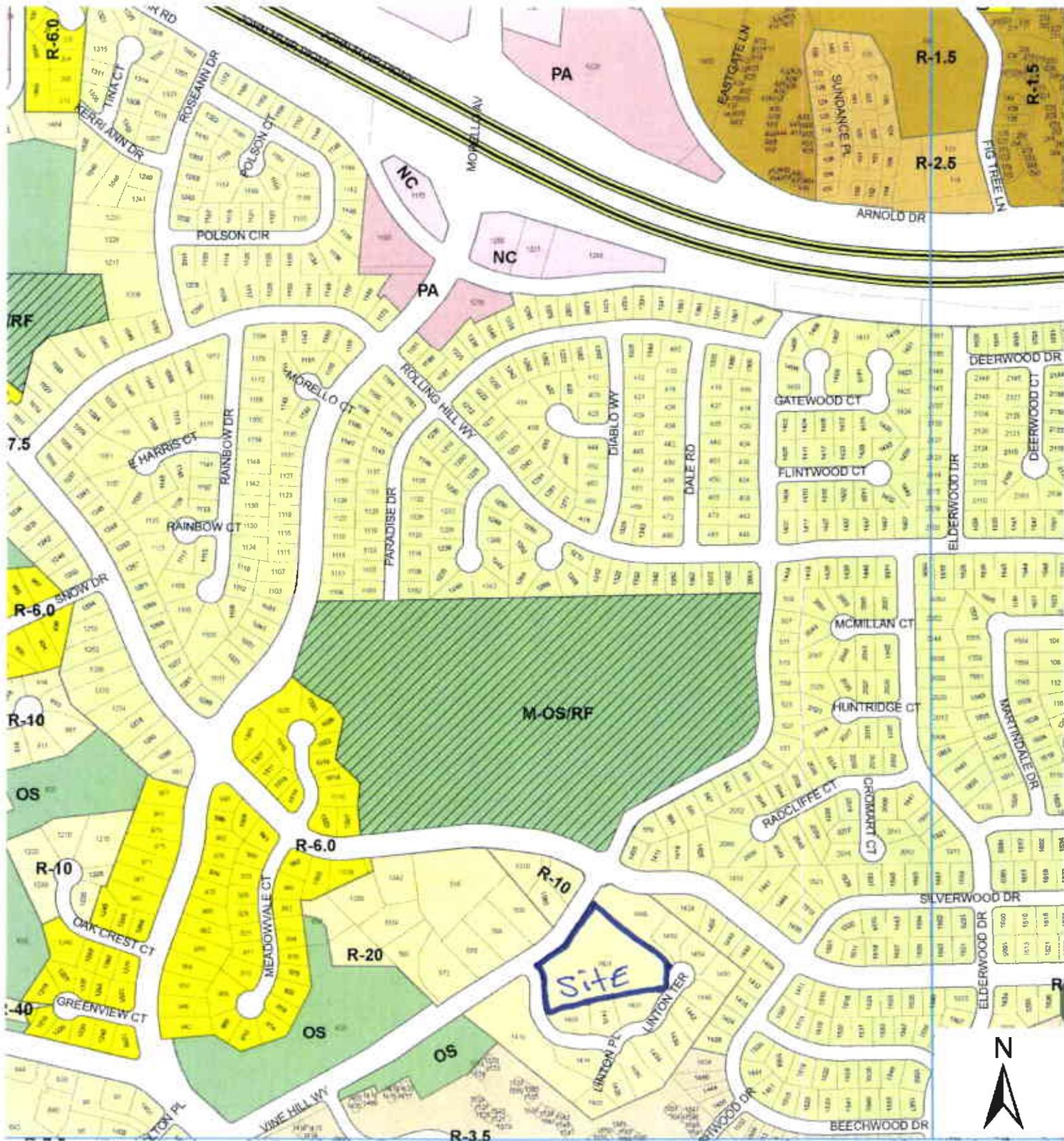


EXHIBIT A

CONDITIONS OF APPROVAL

[DRAFT] AS APPROVED BY PLANNING COMMISSION

Applicant Name: **Teresa Elliott**

Location: **1401 Linton Terrace (APN 155-360-024-6) ("Subject Property")**

I. Description of Permit

These conditions apply to and constitute the approval of Use Permit #10-07 to allow additions to an existing cottage and an existing garage within the rear yard of 1401 Linton Terrace. Use Permit approval is required to allow Accessory Structures over 1,000 square feet, with a height of approximately 17 feet when a maximum of 15 feet is allowed, and with the total combined size of both structures exceeding 50% of the main structure's gross floor area.

II. Exhibits

The following exhibits are incorporated as conditions of approval, except where specifically modified by these conditions:

EXHIBIT	DATE RECEIVED	PREPARED BY	PAGES
Site Plan, Driveway Plan, Floor Plans, Elevations, Sections, and Notes	April 8, 2011	Cibotti Engineering	7
Central Contra Costa Sanitary District (CCCSD) Sewer Map	September 10, 2010	CCCSD	1

All construction plans and all improvements constructed pursuant to Use Permit #10-07 shall conform to these exhibits. Building permit plans shall include a checklist of these conditions for staff review and verification that the conditions have been met. Where a plan or further information is required by these conditions, it is subject to review and approval by the Planning Division, Engineering Division, or Building Division as noted.

III. Conditions

- A. The cottage's porch area, labeled as "existing" and "new" on the plans shall be unconditioned space. The conditioned space of the cottage shall be approximately 800 square feet, conforming to the City of Martinez Second Unit Ordinance maximum size limitation (Ord. 1312 C.S. § I 2004, MMC 22.12.084).
- B. Building permit plans shall provide accurate survey of Linton Terrace bulb, showing relationship of edge of pavement, fence, property line, and cottage at the rear of 1401 Linton Terrace.

- C. The new rear yard fence and sliding gate shall be located on or along the property line of 1401 Linton Terrace and shall not be located in the right-of-way
- D. The new driveway for the cottage allows for one on-site parking space. No parking shall be allowed in the right-of-way, between the edge of pavement and the property line. Parking for the cottage's residents and guests shall be provided on-site.
- E. Exterior materials, finishes and colors of the cottage and garage shall match existing as indicated on the elevations.
- F. All exterior lighting shall be directed such that lights create as little off-site glare and nuisance as is feasible. All fixtures shall be glare-shielded. Energy-saving fixtures shall be used.
- G. All construction activities shall conform to the City's Noise Control Ordinance, Chapter 8.34 of the Municipal Code: Construction activities are limited to the hours of 7:00 a.m. to 7:00 p.m., Monday through Friday; and 9:00 a.m. to 5 p.m. Saturday and Sunday. The permittee shall post a sign on the site notifying all workers of these restrictions.
- H. All construction equipment shall be muffled in accordance with State Law.
- I. All fees and deposits required by City and other agencies having jurisdiction shall be paid prior to City approval to the Building Division. Prior to approval of the plans and issuance of permits, applicant shall pay all applicable fees and deposits including plan check fees, inspection, and drainage impact fees. The final amount for the above fees shall be in accordance with the fee schedule in effect of time of payment.
- J. A City Encroachment Permit is required for any work within the City Right-of-Way. A site development permit is required for working on the property.
- K. Construction shall comply with all applicable City and State building codes and requirements including energy conservation requirements, grading, and erosion control ordinances.
- L. The on-site finish grading shall require drainage to be directed away from all building foundations at a slope of 2 percent minimum to 20 percent maximum toward approved drainage facilities or swales. Non-paved drainage swales shall have a minimum slope of 1 percent. A minimum 4-ft. wide clear access shall be provided around each building.

- M. Erosion control measures shall be implemented per plans approved by the City Engineer for all grading work not completed before October 1. At the time of approval of the improvement and/or grading plans, an approved Erosion Control Plan prepared by a registered Civil Engineer shall be filed with the City Engineer.
- N. The applicant's engineer shall certify the actual pad elevation for the lot in accordance with City standards.
- O. The finished grading shall be inspected and certified by the developer's engineer that it is in conformance with the approved Grading Plan and Soils Report pursuant to the provisions of Title 15 of the Martinez Municipal Code.
- P. The plans shall include the boundary treatment shown on cross sections, drawn to scale, for retaining walls, fencing and drainage.
- Q. All concentrated runoff shall be collected and conveyed to an approved storm drainage system to the satisfaction of the City Engineer. Existing slopes that have no additional discharge directed onto them or are not substantially re-graded can remain as natural runoff.
- R. Applicant shall not increase storm water runoff to adjacent downhill lots unless either, (1) a Drainage Release is signed by the property owner(s) of affected downhill lots and recorded in the office of the County Recorder; or (2) site drainage is collected and conveyed in approved drainage facilities within a private drainage easement through a downhill property. This condition may require collection of on-site runoff and construction of an off-site storm drainage system. All required releases and/or easements shall be obtained prior to issuance of the site development or Building Permit which ever comes first.
- S. All new utility distribution services on-site and off-site shall be installed under ground.
- T. The developer shall keep the adjoining streets free and clean of project dirt, mud, materials and debris during the construction period as is found necessary by the City Engineer.
- U. Where required, water system facilities shall be designed to meet the requirements of the City's water service agency and the fire flow requirements of the Contra Costa County Consolidated Fire Protection District.
- V. Where required, sewer system connections shall be approved by the Sanitary District. All requirements of that District shall be met before approval of the improvement plans.

- W. Complete grading, site and improvement plans, specifications and calculations shall be submitted to and approved by the City Engineer, Community Development Director, and/or other agencies having jurisdiction for all improvements within the proposed development prior to issuance of a Building, Site, or Encroachment Permit whichever comes first.
- X. There shall be no parking of construction vehicles or equipment on the surrounding residential streets, including all workers vehicles.
- Y. Adequate dust control measures shall be employed throughout all grading and construction periods. The Contractor shall regularly water areas that are exposed for extended periods to reduce wind erosion.

IV. Validity of Permit and Approval

- A. Planning Commission approval is subject to appeal to the City Council within ten calendar days of the approval.
- B. The use permit approval shall expire in one year from the date on which it became effective (unless extended under C below) unless a building permit is obtained and construction begun within the said one year time period. The effective date of the use permit approval is April 26, 2011.
- C. The applicant may apply to extend the expiration date of April 26, 2012 if an application with the required fee is filed at least 45 days before the said original expiration date. (Otherwise the use permit approval expires, is of no further force or effect and a new application for such use permit is required) A public hearing will be required for all extension applications, except those involving only Design Review. Extensions are not automatically approved: Changes in conditions, City policies, surrounding neighborhood, and other factors permitted to be considered under the law, may require or permit denial.
- D. Nothing contained herein shall be construed to permit any violation of relevant ordinances and regulations of the City of Martinez, or other public agency having jurisdiction.
- E. The applicant, Teresa Elliott shall defend, indemnify and hold harmless the City and its agents, officers, attorneys and employees from any claim, action, or proceeding brought against the City or its agents, officers, attorneys or employees to attack, set aside, void, or annul the Planning Commission's decision to approve Use Permit #10-07, and any environmental document approved in connection therewith. This indemnification shall include damages or fees awarded against the City, if any, cost of suit, attorneys' fees, and other costs and expenses incurred in connection with such action whether incurred by Teresa Elliott, the City, and/or the parties initiating or bringing such action.
- F. Teresa Elliott, shall defend, indemnify and hold harmless the City, its agents,

officers, employees and attorneys for all costs incurred in additional investigation of, or study of, or for supplementing, preparing, redrafting, revising, or amending any document (such as the Negative Declaration), if made necessary by said legal action and if Teresa Elliott desires to pursue securing such approvals, after initiation of such litigation, which are conditioned on the approval of such documents.

- G. In the event that a claim, action or proceeding described in section E, above, is brought, the City shall promptly notify Teresa Elliott of the existence of the claim, action or proceeding, and the City will cooperate fully in the defense of such claim, action or proceeding. Nothing herein shall prohibit the City from participating in the defense of any claim, action or proceeding. In the event that Teresa Elliott is required to defend the City in connection with any said claim, action, or proceeding, the City shall retain the right to (i) approve the counsel to so defend the City, (ii) approve all significant decisions concerning the manner in which the defense is conducted, and (iii) approve any and all settlements, which approval shall not be unreasonably withheld. The City shall also have the right not to participate in said defense, except that the City agrees to cooperate with Teresa Elliott in the defense of said claim, action or proceeding. If the City chooses to have counsel of its own to defend any claim, action or proceeding where Teresa Elliott has already retained counsel to defend the City in such matters, the fees and expenses of the counsel selected by the City shall be paid by the City, except that the fees and expenses of the City Attorney shall be paid by the applicant.
- H. Teresa Elliott shall indemnify the City for all the City's costs, fees, and damages, which the City incurs in enforcing the above indemnification provisions.
- I. The Conditions of Project Approval set forth herein include certain fees, dedication requirements, reservation requirement, and other exactions. Pursuant to Government Code Section 66020(d)(1), these Conditions constitute written notice of a statement of the amount of such fees, and a description of the dedications, reservations, and other exactions. You are hereby further notified that the 90-day approval period in which you may protest these fees, dedications, reservations, and other exactions, pursuant to Government Code Section 66020(a), has begun. If you fail to file a protest within this 90-day period complying with all of the requirements of Section 66020, you will be legally barred from later challenging such exactions.

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RESOLUTION NO. PC 11-02

**A RESOLUTION OF THE PLANNING COMMISSION
OF THE CITY OF MARTINEZ,
DENYING AN APPEAL UPHOLDING THE ZONING ADMINISTRATOR'S DECISION
AND APPROVING USE PERMIT #10-07 ALLOWING ADDITIONS TO AN EXISTING
COTTAGE AND GARAGE, WITH EXCEPTIONS TO THE NORMALLY PERMITTED
HEIGHT AND SIZE OF ACCESSORY STRUCTURES IN THE R-20 ZONING DISTRICT,
LOCATED AT 1401 LINTON TERRACE
(APN: 155-360-024-6)**

WHEREAS, the City of Martinez received a request for a Use Permit ("Project") to allow additions to an existing cottage and garage ("Accessory Structures") at 1401 Linton Terrace, identified as APN 155-360-024-6 ("Project Lot", "Project site", "site", or "subject property"), within the City of Martinez; and

WHEREAS, the Project proposes to construct additions to the cottage by adding a new bedroom and porch expansion, and storage space for the garage, while matching current heights; and

WHEREAS, the zoning applicable to the property is R-20 (One-Family Residential District), as set forth in the Municipal Code, Martinez, California, at Title 22 "Zoning," and Chapter 22.12 "Residential Districts" ("Zoning Ordinance"), establishing a minimum site area for the R-20 District of 20,000 square feet, which allows for single-family residences and accessory structures as requested by the Project, and which provides for certain accessory structure height, size, setbacks, and lot coverage requirements; and

WHEREAS, the Zoning Administrator approved the applicant's (Teresa Elliott) application for a Use Permit #10-07 with certain conditions of approval at a duly noticed and held public hearing on November 3, 2010; and

WHEREAS, on November 15, 2010, the appellants (Ron & Carolyn Glover, Michael & Patricia Fotheringham, Judith Rowan, and John Walker) filed a timely appeal of the Zoning Administrator's decision with the City of Martinez; and

WHEREAS, the Planning Commission held a duly noticed public hearing on April 26, 2011, to consider the appeal and consider public testimony on the matter and all other substantial evidence in the record; and

WHEREAS, the Planning Commission as part of its public hearing imposed certain Conditions of Approval on the Project for the Use Permit #10-07 which are required for the Project; and

WHEREAS, the Record of Proceedings ("Record") upon which the Planning Commission bases its decision regarding the Project includes, but is not limited to: (1) all staff reports, City files and records and other documents prepared for and/or submitted to the Zoning Administrator, the Planning Commission, and the City relating to the Project, (2) the evidence, facts, findings and other determinations set forth in this resolution, (3) the City of Martinez General Plan and related EIR, Hidden Lakes Specific

Area Plan, and the Martinez Municipal Code, (4) all applications, designs, plans, studies, data and correspondence submitted by the applicant in connection with the Project, (5) all documentary and oral evidence received at public hearings or submitted to the City relating to the Project, (6) all other matters of common knowledge to the Planning Commission including, but not limited to, City, state and federal laws, policies, rules regulations, reports, records and projections related to development within the City and its surrounding areas; and

NOW, THEREFORE, the Planning Commission of the City of Martinez resolves and finds as follows:

- 1) That the above recitals are found to be true and constitute part of the findings upon which this resolution is based.
- 2) The Project is categorically exempt from the requirements of CEQA, under Sections 15301 (Existing Facilities) and 15303 (New Construction or Conversion of Small Structures). The Project involves repair and minor alterations of the existing cottage and garage on the subject property. The Project involves only minor expansion of these existing uses, by the addition of 659 square feet of space to the cottage and 654 square feet to the garage, which will not result in an increase of more than 10,000 square feet, as the Project is in an area where all public services and facilities are available, and the Project is not located in an environmentally sensitive area. In addition, the Project with the accessory structure additions involves construction with minor modifications to the exterior of small structures such as a second dwelling unit in a residential zone and a garage accessory (appurtenant) structure.

The Project site is not in a particularly sensitive environment. The site is a residentially developed lot upon which there are no environmental resources of hazardous or critical concern where designated, precisely mapped, and officially adopted pursuant to law by federal, state, or local agencies. There are no projects in the area which could result in cumulative impacts of the same type in the same place. The Project site is part of a standard subdivision, on a developed residential lot without any endangered species, riparian habitats, or protected wetlands. The site is not within an officially designated state scenic highway, as there are no state scenic highways located in the City of Martinez. The Project site is not included on any list compiled pursuant to Section 65962.5 of the Government Code for hazardous waste sites. The Project will not affect historical resources, as the cottage and garage are not historically significant.

- 3) The Project is consistent with the Martinez General Plan policies and with the Residential Slope Density Ordinance land use designation of the Hidden Lakes Specific Area Plan, including but not limited to the policies mentioned below. The Planning Commission hereby makes the following findings with respect to the General Plan and the Hidden Lakes Specific Area Plan:

(a) 21.312 - Land Use Element, Residential Uses, Protected Neighborhoods: To respect the established physical patterns of these

neighborhoods, new residential structures should be similar in scale and type of accommodations to existing units.

Facts in Support of Finding: The existing residential character of the neighborhood will continue to be preserved with the additions to the Accessory Structures while respecting the established physical patterns of the neighborhood. The proposed additions to the cottage and garage are proposed to be made to existing structures that are ancillary in use to the main residence located on the Project lot. The scale of the cottage and garage will be smaller than the single-family residences located in neighborhood. The height of the additions is proposed to match the existing heights of the two structures.

- (b) 32.34 - Hidden Lakes Specific Area Plan, Land Use and Development Policies: Proposed development must be compatible with the Specific Plan with respect to natural terrain and vegetation, architectural and site design quality, adequacy of access and traffic impact.**

Facts in Support of Finding: The Project promotes the Hidden Lakes Specific Area Plan's policy that encourages development that is compatible with natural terrain, vegetation, architectural and site design, and access and traffic impact. The Project will be compatible with the natural terrain and vegetation since there will not be significant grading of the site or removal of protected trees. The Project will be compatible with the existing architectural and site design quality since the additions to the cottage and garage include materials to match the materials and colors of the existing structures. In terms of access and traffic impact, the Project will improve access to the site with the new driveway while meeting the on-site parking requirements for the cottage.

- 4) As set forth in the Zoning Ordinance at §22.12.265 "Accessory Structures," exceptions are set forth allowing for the granting of a Use Permit for the additions to the cottage and garage. The Zoning Ordinance provides for a Use Permit for proposed construction that exceeds: (i) a height limit of 15 feet and a single story; and/or (ii) a maximum building size of 1,000 square feet and 50% of the main structure's gross floor area. The Project proposes: (i) heights of approximately 17 feet; and (ii) building sizes over 1,000 square feet and equaling 64% of the main structure's gross floor area. Based thereon, the Planning Commission hereby makes the following findings with respect to the granting of a Use Permit for the Project.

- (a) The proposed location of the conditional use is in accord with the objectives of the zoning code, and the purposes of the district in which the site is located.**

Facts in Support of Finding: The Zoning Ordinance at Title 22, "Zoning" provides at §22.02.010 that Title 22 is adopted to "protect and promote the public health, safety, peace, comfort, convenience, prosperity and general welfare of the public..." Section 22.02.010 lists specific objectives, including

the following:

- A. To implement the objectives of the General Plan in all its elements...to guide, control and regulate the maintenance, change, growth and development of the City.
- B. To foster a harmonious, convenient, workable relationship between land uses.
- C. To promote the stability of existing land uses which conform to the General Plan and to protect them from inharmonious influences and harmful intrusions.

The General Plan designation for the Project is Hidden Lakes Specific Area Plan: Residential Slope Density Ordinance. The General Plan provides for residential development in the area of the Project. The Project consists of additions to two existing residential Accessory Structures, and will not alter the stability of existing land uses on the site. Since the existing cottage does not have on-site parking, the new driveway will permit on-site parking, thus addressing neighbor's concerns and making the cottage and the overall Project more fitting, compatible, and functional. Further, the Accessory Structures are an important component of the residential experience afforded to the property owner and/or user of the Project Lot. The Project will be consistent with the General Plan, the Hidden Lakes Specific Area Plan, and the goals, policies and directions for residential development set forth above.

The purposes of the R - Residential Districts, including the R-20 District, are set forth in the Zoning Ordinance at Title 22, Chapter 22.12 "Residential Districts." These purposes include the following:

- A. Reserve appropriately located areas for residential living in a variety of types of dwellings, at a reasonable range of population densities consistent with sound standards of public health and safety.
- B. Ensure adequate light, air and privacy for each dwelling unit.
- C. Provide adequate amounts of private open space in proximity to each dwelling unit.

The intent of "Accessory Structures," is set forth in the Zoning Ordinance at Title 22, Section 22.12.265.A. "Accessory Structures" are intended to ensure adequate light, air, and privacy for residential properties, balancing the appropriateness of the accessory structures' design to preserving the residential character and neighbor's privacy with the applicant's ability to fully utilize the property in accordance with all applicable standards of the City's zoning regulations. Further, Title 22, Section 22.04.530 define "Accessory Structures" as an attached or detached subordinate structure, which is, subordinate in size and incidental to the use of the main structure

or the main use of the land, and which is located on the same site with the main structure or use. Examples of detached accessory structures include secondary housing units and garages, as is proposed for the Project.

The Project proposes to construct additions to an existing 710 square foot cottage and an existing 1,260 square foot garage in the rear yard of an existing residence. The 659 square foot cottage addition would include a new bedroom, an expansion of the enclosed porch, and would have a height of 17 feet-2 inches, matching the current cottage height. The applicant is making these changes to the cottage so that her mother can reside independently and comfortably near her in a single-story space. The 654 square foot garage addition would be used for storage space and would have a height of 17 feet-6 inches, matching the existing garage height.

The proposed additions to the Accessory Structures with the proposed heights and sizes are consistent with the purposes of the R-20 District and the intent and definition of "Accessory Structures." The Project will be for residential use, and will not add any uses inconsistent with such residential use. As mentioned above the proposed additions to the Accessory Structures will be used as a secondary housing unit and storage. The proposed uses for the Accessory Structures will remain incidental to the existing residence on the site.

Moreover, the proposed additions to the Accessory Structures will not have adverse effects on the light, air and privacy of neighboring properties and owners of such properties. This is so because of where the Accessory Structures are located on the large, 2.35 acre Project site. The proposed Project meets the rear and side property line setbacks, as well as site coverage requirements.

The new driveway will help bring the existing cottage into conformance with parking regulations under the Zoning Ordinance at §22.12.085.C.4. Currently, the existing cottage does not have an on-site parking space. The new driveway will ensure that adequate on-site parking is provided for the cottage's residents and guests.

Further, the proposed additions to the cottage and garage will match the materials and colors of the existing structures. The materials of the proposed additions include wood siding, and asphalt and composite roof shingles that will match the existing structures. The proposed Project is designed to be subordinate to the existing residence on the lot, to preserve the residential character of the area and to match the style of the existing structures, as well as to fit in with the adjacent homes and garages on Linton Terrace and the surrounding neighborhood.

- (b) The proposed location of the conditional use and the proposed conditions under which it would be operated or maintained will not be detrimental to the public health, safety or welfare, or materially injurious to properties or improvements in the vicinity.**

Facts in Support of Finding: The proposed location of the Project and the additions of the Accessory Structures will not have impacts on or be detrimental to, the public health, safety and welfare. The Project will continue the ancillary uses of the cottage and garage, and there will be no new uses on the site. The new driveway will help ensure that parking for the cottage is on-site and that no parking impacts occur.

The proposed construction areas for the additions to the cottage and garage on the Project site are relatively flat. The large 2.35 acre Project lot, the relatively flat lot, and location of the Accessory Structures at the rear of the Project site prevents the structures' heights and sizes from negatively impacting surrounding residences. The height, mass and scale of the structures will remain in harmony with the existing neighborhood. Further, the existing height of the both the cottage and garage are currently above 15 feet and the height of the additions will not exceed the current heights. The 659 square foot cottage addition would have a height of 17 feet-2 inches, matching the current cottage height and the 654 square foot garage addition would have a height of 17 feet-6 inches, matching the existing garage height.

For the foregoing reasons, the proposed Project will be consistent with surrounding uses and thus will not be detrimental to public health, safety or welfare, or be materially injurious to properties or improvements in the vicinity.

(c) The proposed conditional use will comply with each of the applicable provisions of Title 22 of the Martinez Municipal Code.

Facts in Support of Finding: With the exception to building height and size, the Project complies with all other applicable provisions of Title 22 - Zoning of the Martinez Municipal Code, including requirements for rear property line setbacks, side property line setbacks, site coverage for the minimum required rear yard, site coverage for the whole lot, and the development standards, as adjusted with the subject Use Permit approval, of the R-20 zoning district and the intent and definition of "Accessory Structures."

5) The Planning Commission hereby makes the following findings with respect to the Appeal:

(a) Appeal Issue #1

Allegation of the Appeal Issue #1: "The conditions of approval are vague and unclear, allowing for potential future abuses of intended Zoning Administrator provisions."

Finding to Deny Appeal Issue #1: The Project's conditions of approval are clear and definite. The Project's conditions of approval are consistent with the City's standard conditions of approval and Martinez Municipal Code Section 22.40.010, which allows imposition of reasonable conditions upon

the granting of use permits.

Facts in Support of Finding: The conditions of approval for the proposed Project are clear, specific, detailed, and are logically related and proportional to the Project. The conditions of approval for this Project consisted of standard conditions of approval plus the three conditions of approval added by the Zoning Administrator. The standard conditions of approval relate specifically to the proposed Project and subject property. The three conditions of approval added by the Zoning Administrator were drafted at the hearing to address concerns and issues brought up by the neighbors.

(b) Appeal Issue #2

Allegation of the Appeal Issue #2: "Significant issues were raised by the both the Applicant and neighbors during the hearing that were not addressed in the conditions of approval."

Finding to Deny Appeal Issue #2: The Project's conditions of approval address issues raised at the Zoning Administrator hearing. Martinez Municipal Code Section 22.40.010 allows imposition of reasonable conditions upon the granting of use permits.

Facts in Support of Finding: The issues brought up at the Zoning Administrator hearing included concerns regarding parking in the cul-de-sac, use of the right-of-way, access and the gate at the rear of the property, and the properties garbage pick-up location. Overall, the main issue discussed was regarding the parking in the cul-de-sac, also referred to as the Linton Terrace bulb. The following condition was added by the Zoning Administrator to address this issue: "*As part of the building permit plans, boulders or similar features, subject to approval of the City Engineer, shall be placed between the fence at the rear of 1401 Linton Terrace and Linton Terrace bulb to preclude parking in the right-of-way. Parking for the cottage's residents and guests shall be provided on-site.*" It should be noted that no significant concerns and issues were raised about the Use Permit or regarding the additions, heights, and sizes of the Accessory Structures. The neighbors did not have issues with the design of the buildings for the proposed Project.

(c) Appeal Issue #3

Allegation of the Appeal Issue #3: "The decision and conditions of approval are inconsistent with statements by the Applicant at the November 3 hearing, and thus unsupported by the evidence in the record."

Finding to Deny Appeal Issue #3: There is no credible evidence to suggest that the statements by the Applicant are inconsistent with the Project's conditions of approval and the Zoning Administrator's decision.

Facts in Support of Finding: The Zoning Administrator's decision was based

on the record as whole, including the information contained in the staff report, attachments, exhibits (project plans), public testimony, and evidence (three letters) submitted at and before the hearing. The conditions of approval relate specifically to the subject property and proposed Project, as depicted on the Project plans for the Use Permit provided by the applicant. Further, there was adequate support for the findings made for the Use Permit. It is unclear what "statements by the Applicant" the appellant believe are inconsistent with the decision and conditions of approval, and no specifics are provided in the appeal.

(d) Appeal Issue #4

Allegation of the Appeal Issue #4: "The decision and conditions of approval were based on inaccurate information provided by the applicant. Thus, the Zoning Administrator was not able to make an informed decision based on the presentation of complete and accurate evidence."

Finding to Deny Appeal Issue #4: There is no credible evidence to suggest that the Applicant provided inaccurate information in relation to the Project's conditions of approval and the Zoning Administrator's decision.

Facts in Support of Finding: As mentioned above, the Zoning Administrator's decision for the Use Permit request was based on the record as a whole, findings, and the conditions of approval that specifically relate to the proposed Project plans submitted by the applicant. The appellant has provided no information as to what information is believed to be "inaccurate."

NOW, BE IT FURTHER RESOLVED that based on the findings set forth herein and the Record as a whole, the Planning Commission hereby denies the appeal and approves Use Permit #10-07 subject to conditions of approval attached hereto as Exhibit A and incorporated herein by this reference.

I HEREBY CERTIFY that the foregoing is a true and correct copy of a resolution duly adopted by the Planning Commission of the City of Martinez at a regular meeting of said Commission held on the 26th day of April, 2011:

AYES:

NOES:

ABSENT:

ABSTAINED:

BY: _____
Donna Allen
Planning Commission Chair

Anjana Mepani
Associate Planner

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November 15, 2010



City of Martinez
Board of Appeals – Planning Commission
525 Henrietta Street
Martinez, CA 94553

Re: Appeal of November 3 Zoning Administrator Approval

Board of Appeals:

We, the residents of Linton Terrace, hereby appeal the November 3, 2010 decision of the Zoning Administrator granting a use permit to allow two accessory structures to be approximately 17 feet in height and over 1,000 sq. ft. with a total combined size of both structures exceeding 50% of the main structure's gross floor area located at 1401 Linton Terrace.

The grounds for this appeal include the following: (1) the decision was based on an error or abuse of discretion; (2) the decision is not supported by the evidence in the record; and (3) subsequent to the November 3 hearing, statements made by the Applicant at the November 3 hearing were proven inaccurate. Thus, the decision was made based on inaccurate information, and failed to address a number of concerns raised. Among our specific concerns include the following:

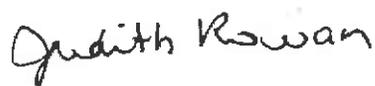
- The conditions of approval are vague and unclear, allowing for potential future abuses of intended Zoning Administrator provisions.
- Significant issues were raised by the both the Applicant and neighbors during the hearing that were not addressed in the conditions of approval.
- The decision and conditions of approval are inconsistent with statements by the Applicant at the November 3 hearing, and thus unsupported by the evidence in the record.
- The decision and conditions of approval were based on inaccurate information provided by the applicant. Thus, the Zoning Administrator was

not able to make an informed decision based on the presentation of complete and accurate evidence.

It is our goal to achieve a successful compromise that addresses the concerns of both the Applicant and neighbors. However, that compromise should provide clarity going forward, and should be based on complete and accurate information.

We look forward to working with the Planning Commission, staff, and the Applicant to address the remaining issues and to achieve a resolution that is acceptable to all involved.

Sincerely,



Judith Rowan
1446 Linton Terrace



Ron & Carolyn Glover
1450 Linton Terrace



John Walker
1458 Linton Terrace



Michael & Patricia Fotheringham
1460 Linton Terrace



Tes Elliott
1401 Linton Terrace
Martinez, Ca 94553

April 12, 2011

Dear Planning Commission Members,

Hello, my name is Tes Elliott, and I am the property owner of 1401 Linton Terrace. I have lived in Martinez, at my current address since 1990, for over twenty years now. I have two daughters Anastasia, who is 20 years old and attending school in Santa Barbara, and Alexandria who is a senior at College Park High School, and lives with me. I have always enjoyed living in Martinez and in the Linton Terrace neighborhood.

I have had a few big dreams in my life. One of them was to remodel the 1940's farmhouse that was on the property originally into a Victorian that my friends and family could enjoy. I envisioned the house to be a peaceful place, and a fun place where memories could be made. I hope to leave the home to my children, and maybe even grandchildren someday.

I would like very much to remodel the cottage on the property for my Mom to live in. Although the main house is spacious, it has stairs on all levels and she has fallen twice while visiting. My Mother "Jayne" is a pancreatic cancer survivor (3 ½ years) and a diabetic. I am very uncomfortable with her living alone 30 minutes away. She is 71 years young and would like to maintain her independence while enjoying a close proximity to me. It would be impossible to achieve this goal with the current studio size of the cottage. We are hoping to add a nice bedroom, remodel the bathroom and kitchen and really make it nice for her.

We are also planning on adding on to the back of garage in order to fit collectable cars and gardening equipment. Currently the back of the garage has a temporary awning in place to protect a riding mower, rotor-tiller and other items I would like to keep inside a garage. I think the new garage addition will be a clean and tastefully done improvement. There is ample space behind the garage to accomplish this goal with plenty of room between the new garage and the fence line.

It is my understanding according to letters from a few of the neighbors that the concerns with my proposal to add onto the cottage and garage are not with the additions, but with potential parking issues and trash pick-up.

Parking Concerns: There is a fear that extra cars could be parked in the bulb area and obstruct the flow of traffic. Many people, over the years, and currently park vehicles at various locations along the periphery of the bulb, both behind my property line and at all other possible spots in front of various resident sites.

Solution: I believe the best way to solve the parking issue (regarding behind my property line) is for me to install a new driveway from the cul-de-sac and adjacent to the cottage, in order to eliminate any confusion and keep the area designated properly. I think it would be a clean and

attractive solution for everyone. This would do away with cars parking there, as it would clearly be an entrance to the home. This situation would be similar to the existing resident driveways presently in place, which do not have issues with people blocking access to properties.

Trash Pick Up: It was suggested that the trash receptacles from my home obstruct traffic.

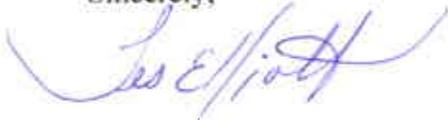
Solution: *All neighbors should keep cans as close to their property as possible. EVERYONE* puts his or her trash out on the street for pick-up. My containers do not stick out any further than any other neighbor's bins. I have been using the garbage service in the same location for 21 years, and consider myself to be a considerate person in placement of the bins. My containers are lined up exactly with my adjacent neighbor's cans every week. In fact they have become mixed up at times. My garbage cans are the same size as others, and they are no more or no less obtrusive than the next guy. The garbage can issue was not brought up until the additions were planned, which makes me suspicious of the relevance to this matter.

Dumpsters were placed in the area during joint fence projects on two occasions for approximately a week, with the Fotheringham's next to me, and previously with the Gorman's on the other side, who have since moved. The dumpster was paid for and used by each set of neighbors for the prospective project and was removed in a timely manner after the project was completed. Dumpsters are costly to rent and no one would leave a dumpster out for longer than necessary due to the expense. It makes sense to have it removed quickly upon completion of a job. Over the years various neighbors have had "clean-up days", construction projects, over flow parking during gatherings, moving vans, etc. *this is part of life.*

I contacted Allied Waste, to inquire if there had been any complaints from the garbage collectors or neighbors regarding access on trash days. According to the supervisor there had not been any problems or complaints, ever.

In closing I would like to say that I have a dream to have my Mother near me in a comfortable place. I believe in the Golden Rule. I would be happy for any of my neighbors that wanted to add a mother-in-law unit onto their property, if it were done within the city's zoning parameters. There may not ever be peace on earth, but it would be wonderful to have some peace, respect, and compassion for one another on Linton Terrace.

Sincerely,



Tes Elliott



City of Martinez

525 Henrietta Street, Martinez, CA 94553-2394

[925] 372-3515

November 5, 2010

Teresa Elliott
1401 Linton Terrace
Martinez, CA 94553

Dear Ms. Elliott:

On Wednesday, November 3, 2010, acting as Zoning Administrator, I approved the request for a use permit to allow an accessory structure to be approximately 17 feet in height and over 1,000 square feet with a total combined size of both structures exceeding 50% of the main structure's gross floor area located at 1401 Linton Terrace, in Martinez.

The conditions of approval are attached.

This decision may be appealed to the Planning Commission by yourself or any interested person. There is a 10-day appeal period which ends on Monday, November 15, 2010.

You may proceed in applying for your building permit after the appeal period has expired. For more information on obtaining a building permit, please contact Rigo Casarez, Building Permit Technician, at 372-3550.

Sincerely,

Corey Simon
Senior Planner

Attachment

cc: Rigo Casarez, Building Permit Technician
Engineering
Project File
Chron
Binder



STAFF REPORT

TO: ZONING ADMINISTRATOR

PREPARED BY: Anjana Mepani, Associate Planner

REVIEWED BY: Terry Blount, AICP, Planning Manager

GENERAL INFORMATION

OWNER/APPLICANT: Teresa Elliott

LOCATION: 1401 Linton Terrace (APN 155-360-024-6)

PROPOSAL: Public hearing on a request for Use Permit approval to allow additions to an existing cottage and an existing garage within the rear yard of 1401 Linton Terrace. Use Permit approval is required to allow Accessory Structures over 1,000 square feet, with a height of approximately 17 feet when a maximum of 15 feet is allowed, and with the total combined size of both structures exceeding 50% of the main structure's gross floor area.

GENERAL PLAN: Hidden Lakes Specific Area Plan: Residential Slope Density Ordinance (SDO)

ZONING: R-20 (One-Family Residential: 20,000 square feet minimum lot area)

ENVIRONMENTAL REVIEW: Staff proposes that the Zoning Administrator find that this permit be categorically exempt (Class 1 - Section 15301 Existing Facilities and Class 3 - Section 15303 Small Structures) from the requirements of CEQA. If the Zoning Administrator adopts this proposed finding, no further environmental review would be required by State law.

RECOMMENDATION

Approve Use Permit #10-07 subject to the attached conditions of approval.

BACKGROUND

The applicant is proposing to construct additions to an existing 672 square foot cottage and an existing 1,260 square foot garage in the rear yard of an existing residence. The existing structures are located on a large 2.35 acre residential lot at 1401 Linton Terrace. The 670 square foot cottage addition would include a new bedroom, an expansion of the enclosed porch, and would have a height of 17 feet-2 inches. The 654 square foot garage addition would be for storage space and would have a height of 17 feet-6 inches. Use Permit approval is required to allow Accessory Structures over 1,000 square feet, with a height of approximately 17 feet when a maximum of 15 feet is allowed, and with the total combined size of both structures exceeding 50% of the main structure's gross floor area. The large size of the lot, approximately 102,366 square feet, should allow the site to accommodate large accessory structures that are higher than 15' height, because such buildings should cause no negative impacts on any neighbor's views and privacy.

In addition, the total combined size of both accessory structures with the additions would exceed 50% of the main structure's gross floor area. The proposed additions to the cottage and garage would total 64% of the main structures gross floor area. Due to the accommodations of a large lot and the placement of the structures at the rear of the lot, the overage is not out of character. It should be noted that the existing residence would not be altered.

Further, the proposed additions to the cottage and garage will match the materials and colors of the existing structures. The materials of the proposed additions include wood siding, and asphalt and composite roof shingles that will match the existing structures. The proposed project site is a large lot in the R-20 zoning district and is surrounded by single-family residences, many of which are also on large lots.

ZONING COMPLIANCE

The table below provides the Accessory Structure code requirements applicable to the cottage and garage additions:

CRITERIA (DEVELOPMENT STANDARDS FOR ACCESSORY STRUCTURES, APPLICABLE IN THE R-20 ZONING DISTRICT)	MINIMUM REQUIRED OR (MAXIMUM ALLOWED)	PROPOSED COTTAGE	PROPOSED GARAGE	CONFORMITY
Building Height	15'/Single story	17'-2"/Single story	17'-6"/Single story	Use Permit Req'd.
Building Size	<i>(1,000 sq. ft.)/(50% of main structures gross floor area*)</i>	1,342 sq. ft./64%**	1,914 sq. ft./64%**	Use Permit Req'd.
Rear Property Line Setback	5 feet	10.75 feet	8.23 feet	Yes

CRITERIA (DEVELOPMENT STANDARDS FOR ACCESSORY STRUCTURES, APPLICABLE IN THE R-20 ZONING DISTRICT)	MINIMUM REQUIRED OR (MAXIMUM ALLOWED)	PROPOSED COTTAGE	PROPOSED GARAGE	CONFORMITY
Side Property Line Setback	5 feet	21.73 feet	220.15 feet	Yes
Site Coverage (MIN. REQ. REAR YARD)	(25%)	14%		Yes
Site Coverage (WHOLE LOT)	(25%)	10%		Yes

* The total size of all Accessory Structures on a lot cannot exceed 50% of the main structures gross floor area

** Together the proposed cottage and garage additions will total 64% of the main structures gross floor area

STANDARDS FOR APPROVAL and DRAFT FINDINGS

In order to approve the **Use Permit** to allow exceptions to the normally permitted height and size of Accessory Structures, the Zoning Administrator must make the following findings, which it hereby does:

- (a) **The proposed location of the conditional use is in accord with the objectives of this title, and the purposes of the district in which the site is located.** The proposed additions to the existing cottage and existing garage will be contextually compatible in the rear yard of the large residential lot, as per the spirit and intent of regulations governing such ancillary uses and structures in residential zoning districts.
- (b) **The proposed location of the conditional use and the proposed conditions under which it would be operated or maintained will not be detrimental to the public health, safety or welfare, or materially injurious to properties or improvements in the vicinity.** The uncharacteristically large 2.35 acre residential lot, should allow this single family site to accommodate Accessory Structures of the proposed sizes without any negative impacts on any neighbor's views and privacy, as the new additions are equal or less in height to the existing structures, main residence and the buildings in the surrounding area. Also, the relatively flat topography of the proposed work areas and the locations of the existing cottage and garage on the lot preclude the additions to the structures from negatively impacting views and privacy of existing nearby residences. The proposed project will be consistent with surrounding uses and will not be detrimental to public health, safety or welfare, or be materially injurious to properties or improvements in the vicinity.
- (c) **The proposed conditional use will comply with each of the applicable provisions of this title.** With the exceptions sought as a part of the proposal, the project complies with all other applicable provisions of Title 22-Zoning of the Martinez Municipal Code, including the development standards for the R-20

zoning district.

CONCLUSION

Staff is recommending approval of the Use Permit request based on the above findings and the attached draft conditions of approval.

ATTACHMENTS

Site Context Map
Conditions of Approval [DRAFT]

EXHIBITS

Site Plan, Floor Plans, Elevations, and Sections
Central Contra Costa Sanitary District Sewer Map

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CONDITIONS OF APPROVAL
AS APPROVED BY ZONING ADMINISTRATOR

Applicant Name: **Teresa Elliott**

Location: **1401 Linton Terrace (APN 155-360-024-6)**

I. Description of Permit

These conditions apply to and constitute the approval of Use Permit #10-07 to allow additions to an existing cottage and an existing garage within the rear yard of 1401 Linton Terrace. Use Permit approval is required to allow Accessory Structures over 1,000 square feet, with a height of approximately 17 feet when a maximum of 15 feet is allowed, and with the total combined size of both structures exceeding 50% of the main structure's gross floor area.

II. Exhibits

The following exhibits are incorporated as conditions of approval, except where specifically modified by these conditions:

EXHIBIT	DATE RECEIVED	PREPARED BY	PAGES
Site Plan, Floor Plans, Elevations, and Sections	October 5, 2010	Cibotti Engineering	6
Central Contra Costa Sanitary District (CCCSD) Sewer Map	September 10, 2010	CCCSD	1

All construction plans and all improvements constructed pursuant to Use Permit #10-07 shall conform to these exhibits. Building permit plans shall include a checklist of these conditions for staff review and verification that the conditions have been met. Where a plan or further information is required by these conditions, it is subject to review and approval by the Planning Division, Engineering Division, or Building Division as noted.

III. Conditions per the November 3, 2010 Zoning Administrator Meeting

- A. The cottage's porch area, labeled as "existing" and "new" on the plans shall be unconditioned space. The conditioned space of the cottage shall be approximately 800 square feet, conforming to the City of Martinez Second Unit Ordinance maximum size limitation (Ord. 1312 C.S. § I 2004, MMC 22.12.084).
- B. Building permit plans shall provide accurate survey of Linton Terrace bulb, showing relationship of edge of pavement, fence, property line, and cottage at the rear of 1401 Linton Terrace.

- C. As part of the building permit plans, boulders or similar features, subject to approval of the City Engineer, shall be placed between the fence at the rear of 1401 Linton Terrace and Linton Terrace bulb to preclude parking in the right-of-way. Parking for the cottage's residents and guests shall be provided on-site.

IV. Conditions

- A. Exterior materials, finishes and colors of the cottage and garage shall match existing as indicated on the elevations.
- B. All exterior lighting shall be directed such that lights create as little off-site glare and nuisance as is feasible. All fixtures shall be glare-shielded. Energy-saving fixtures shall be used.
- C. All construction activities shall conform to the City's Noise Control Ordinance, Chapter 8.34 of the Municipal Code: Construction activities are limited to the hours of 7:00 a.m. to 7:00 p.m., Monday through Friday; and 9:00 a.m. to 5 p.m. Saturday and Sunday. The permittee shall post a sign on the site notifying all workers of these restrictions.
- D. All construction equipment shall be muffled in accordance with State Law.
- E. All fees and deposits required by City and other agencies having jurisdiction shall be paid prior to City approval of the Building Division. Prior to approval of the plans and issuance of permits, applicant shall pay all applicable fees and deposits including plan check fees, inspection, and drainage impact fees. The final amount for the above fees shall be in accordance with the fee schedule in effect of time of payment.
- F. A City Encroachment Permit is required for any work within the City Right-of-Way. A site development permit is required for working on the property.
- G. Construction shall comply with all applicable City and State building codes and requirements including energy conservation requirements, grading, and erosion control ordinances.
- H. The on-site finish grading shall require drainage to be directed away from all building foundations at a slope of 2 percent minimum to 20 percent maximum toward approved drainage facilities or swales. Non-paved drainage swales shall have a minimum slope of 1 percent. A minimum 4-ft. wide clear access shall be provided around each building.
- I. Erosion control measures shall be implemented per plans approved by the City Engineer for all grading work not completed before October 1. At the time of approval of the improvement and/or grading plans, an approved Erosion Control Plan prepared by a registered Civil Engineer shall be filed with the City Engineer.

- J. The applicant's engineer shall certify the actual pad elevation for the lot in accordance with City standards.
- K. The finished grading shall be inspected and certified by the developer's engineer that it is in conformance with the approved Grading Plan and Soils Report pursuant to the provisions of Title 15 of the Martinez Municipal Code.
- L. The plans shall include the boundary treatment shown on cross sections, drawn to scale, for retaining walls, fencing and drainage.
- M. All concentrated runoff shall be collected and conveyed to an approved storm drainage system to the satisfaction of the City Engineer. Existing slopes that have no additional discharge directed onto them or are not substantially re-graded can remain as natural runoff.
- N. Applicant shall not increase storm water runoff to adjacent downhill lots unless either, (1) a Drainage Release is signed by the property owner(s) of affected downhill lots and recorded in the office of the County Recorder; or (2) site drainage is collected and conveyed in approved drainage facilities within a private drainage easement through a downhill property. This condition may require collection of on-site runoff and construction of an off-site storm drainage system. All required releases and/or easements shall be obtained prior to issuance of the site development or Building Permit which ever comes first.
- O. All new utility distribution services on-site and off-site shall be installed under ground.
- P. The developer shall keep the adjoining streets free and clean of project dirt, mud, materials and debris during the construction period as is found necessary by the City Engineer.
- Q. Where required, water system facilities shall be designed to meet the requirements of the City's water service agency and the fire flow requirements of the Contra Costa County Consolidated Fire Protection District.
- R. Where required, sewer system connections shall be approved by the Sanitary District. All requirements of that District shall be met before approval of the improvement plans.
- S. Complete grading, site and improvement plans, specifications and calculations shall be submitted to and approved by the City Engineer, Community Development Director, and/or other agencies having jurisdiction for all improvements within the proposed development prior to issuance of a Building, Site, or Encroachment Permit whichever comes first.
- T. There shall be no parking of construction vehicles or equipment on the surrounding residential streets, including all workers vehicles.

- U. Adequate dust control measures shall be employed throughout all grading and construction periods. The Contractor shall regularly water areas that are exposed for extended periods to reduce wind erosion.

V. Validity of Permit and Approval

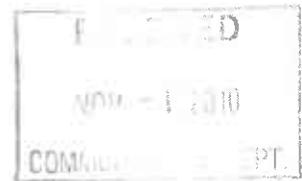
- A. Zoning Administrator approval is subject to appeal to the Planning Commission within ten calendar days of the approval.
- B. The use permit and approval shall expire in one year from the date on which it became effective (unless extended under C below) unless a building permit is obtained and construction begun within the one year time period. If approval includes approval of a subdivision, the expiration time period for all concurrently approved permits or approvals shall be two years, but shall also require the recording of the Final Map or Parcel Map within that time period. The effective date of the permit and approval is November 3, 2010.
- C. The time extension of the expiration date, November 3, 2011, of a permit or approval can be considered if an application with required fee is filed at least 45 days before the original expiration date. (Otherwise a new application is required.) A public hearing will be required for all extension applications, except those involving only Design Review. Extensions are not automatically approved: Changes in conditions, City policies, surrounding neighborhood, and other factors permitted to be considered under the law, may require or permit denial.
- D. Nothing contained herein shall be construed to permit any violation of relevant ordinances and regulations of the City of Martinez, or other public agency having jurisdiction.
- E. The applicant, Teresa Elliott shall defend, indemnify and hold harmless the City and its agents, officers, attorneys and employees from any claim, action, or proceeding brought against the City or its agents, officers, attorneys or employees to attack, set aside, void, or annul the Zoning Administrator's decision to approve Use Permit #10-07, and any environmental document approved in connection therewith. This indemnification shall include damages or fees awarded against the City, if any, cost of suit, attorneys' fees, and other costs and expenses incurred in connection with such action whether incurred by Teresa Elliott, the City, and/or the parties initiating or bringing such action. The City shall promptly notify the applicant of any such claim, action or proceeding. The City shall retain the right to participate in any claim, action, or proceeding.

- F. Teresa Elliott, shall defend, indemnify and hold harmless the City, its agents, officers, employees and attorneys for all costs incurred in additional investigation of, or study of, or for supplementing, preparing, redrafting, revising, or amending any document (such as the Negative Declaration), if made necessary by said legal action and if Teresa Elliott desires to pursue securing such approvals, after initiation of such litigation, which are conditioned on the approval of such documents.
- G. In the event that a claim, action or proceeding described in Subsection E, above, is brought, the City shall promptly notify Teresa Elliott of the existence of the claim, action or proceeding, and the City will cooperate fully in the defense of such claim, action or proceeding. Nothing herein shall prohibit the City from participating in the defense of any claim, action or proceeding. In the event that Teresa Elliott is required to defend the City in connection with any said claim, action, or proceeding, the City shall retain the right to (i) approve the counsel to so defend the City, (ii) approve all significant decisions concerning the manner in which the defense is conducted, and (iii) approve any and all settlements, which approval shall not be unreasonably withheld. The City shall also have the right not to participate in said defense, except that the City agrees to cooperate with Teresa Elliott in the defense of said claim, action or proceeding. If the City chooses to have counsel of its own to defend any claim, action or proceeding where Teresa Elliott has already retained counsel to defend the City in such matters, the fees and expenses of the counsel selected by the City shall be paid by the City, except that the fees and expenses of the City Attorney shall be paid by the applicant.
- H. Teresa Elliott shall indemnify the City for all the City's costs, fees, and damages, which the City incurs in enforcing the above indemnification provisions.
- I. The Conditions of Project Approval set forth herein include certain fees, dedication requirements, reservation requirement, and other exactions. Pursuant to Government Code Section 66020(d)(1), these Conditions constitute written notice of a statement of the amount of such fees, and a description of the dedications, reservations, and other exactions. You are hereby further notified that the 90-day approval period in which you may protest these fees, dedications, reservations, and other exactions, pursuant to Government Code Section 66020(a), has begun. If you fail to file a protest within this 90-day period complying with all of the requirements of Section 66020, you will be legally barred from later challenging such exactions.

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October 29, 2010

City of Martinez
Zoning Administrator
525 Henrietta Street
Martinez, CA 94553



RE: 1401 Linton Terrace (APN 155-360-024-6)
Applicant: Teresa Elliott

I have owned the property at 1458 Linton Terrace since 1976. My concern with this proposal is not with the building but with Ms Elliott's view of use of the parking area in the court adjacent to the rear of her property.

Over the years, I have had confrontations with Ms Elliott concerning the use of roadway parking at the northern end of Linton Terrace. This portion of the court is immediately behind the cottage which Ms Elliott is proposing to add on to.

Ms Elliott has used this area to pile unused patio furniture, pallets and other discarded household goods for weeks at a time before hauling them away. Requests for removal by homeowners in the court met with hostile response and continued storage of junk. Incidents regarding parking of vehicles have flared into confrontations with Ms Elliott insisting that only she or her guests can park in this area.

If possible, I would like to see it stipulated that entrance and parking to the cottage be the same as for the house on 1401 Linton Terrace. I don't know how much property 1401 has, but I'm guessing at least two acres, ample room for parking on site for both homes.

The street at the end of the court is a single lane and very tight to turn. Long term parking behind the cottage makes it very difficult for garbage trucks, delivery trucks and emergency vehicles to make the turn.

Your consideration of my concerns is appreciated.

Sincerely,

John S. Walker

November 2, 2010



City of Martinez
Zoning Administrator
525 Henrietta Street
Martinez, CA 94553

RE: 1401 Linton Terrace (APN 155-360-024-6)

I have owned and resided at 1446 Linton Terrace since 1977. My property is located at the north end of Linton Terrace, directly facing the property of applicant, Teresa Elliott.

This is a unique cul de sac with narrow roads and all of the residents have cooperated in dealing with parking problems, including allowing for parking in private driveways when the need arose.

The exception to this spirit of cooperation has been the applicant Teresa Elliott, who has since first moving here over 35 years ago continually abused the available parking space adjacent to her property. This issue became so serious that it was deemed necessary to contact the city to review the area to ascertain the amount of space that was public right of way. It was proven that most of the space was public right of way and anyone could park there for exceptional circumstances.

Ms Elliott has continually abused this public right of way by parking cars there for an indeterminate length of time, and by leaving a dumpster there for many months and only having it removed after numerous calls by neighbors. She has left trash out there as well as trash bins for days. She has left a boat and trailer parked on the street in front of my house for months and only having it moved after numerous requests. She has placed trash in my recycle bin that was clearly not deemed fit for recycle (I know she did is as she left the tags on the Christmas wrapping paper that clearly identified the trash as coming from her.)

I am concerned that the renovation of the cottage could result in it becoming a rental unit that could be occupied by 2 or more adults, thus adding to more congestion caused by cars parking there.

I am requesting that all parties involved in living at 1401 Linton Terrace be made to enter and exit from the gate at the entrance to 1401 Linton Terrace. I am also requesting that Ms Elliot use her entrance at 1401 Linton Terrace for trash pick up. It is also apparent that her property size in excess of 22,000 square feet should easily accommodate parking for all her needs, and therefore the back entrance should be sealed up, so she does not have access at the north end of Linton Terrace, where the street is narrow and space must be made for garbage trucks and emergency vehicles.

While applicant may agree to seal off this back entrance, there will be little control to stop her from using it once the structures have been renovated. Her history of hostility and non cooperation leads me to believe that she will break this agreement as well.

Thank you for your consideration of my concerns.

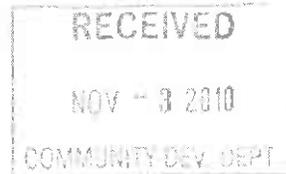
Sincerely,

A handwritten signature in cursive script, appearing to read "Judith A. Rowan".

Judith A. Rowan

November 3, 2010

Zoning Administrator
City of Martinez
525 Henrietta Street
Martinez, CA 94553



Regarding: Use Permit - 1401 Linton Terrace (APN 155-360-024-6)

Dear Sir:

We would like to state our comments and concerns regarding the proposed application to expand the size of the existing accessory unit and garage on the property. Having not seen the design documents, additional comments may be offered during the public hearing.

Our concerns are focused on the possible impact of the expansion if the accessory structure is to be rented out in the future. We are concerned that additional street parking and ingress and egress that may occur from the back gate that fronts onto the cul-de-sac. The current situation has been confusing due to the fact that the home owner has located a portion of the property line fence on their property in an effort to create private parking next to the cul-de-sac and outside her fence. The owner has modified some of the public right-of-way and her property in order to create private parking. The area created is undersized and cannot accommodate private parking. We would like confirmation from the City that the extent of the original public right-of-way did not allow parking on this portion of the street. Given that the current appearance of the available roadside invites visitors to park, as many as three cars have been parked in the public/private area. This creates an unsafe condition and impedes access for garbage collection.

We would ask that the City clarify whether parking should be allowed on the cul-de-sac. If it is not, then we would suggest that the property line fence be relocated to the property line, as a condition of this application. The letter from John Walker identifies other impacts brought about by the current configuration and use of the area outside the back fence. We also suggest that vehicular access to the accessory structure be provided via the existing driveway off of Linton Terrace.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael Fotheringham".

Michael Fotheringham
1460 ~~1461~~ Linton Terrace
Martinez, CA 94553







