



MEMORANDUM

TO: PLANNING COMMISSION

FROM: Corey Simon, Senior Planner

DATE: For meeting of April 9, 2013

SUBJECT: 1020 West Arlington Way (APN: 372-121-057); William Wood, Architect/Gus Kramer (applicant/property owner); Suzanne J. Chapot, et al. (appellants); FILE # 12PLN-0010: CONTINUED Public hearing on an appeal of the approval decision of the Zoning Administrator to grant Use Permit, Variance and Design Review approvals to expand an existing 2-car garage structure within the front yard, adding parking for 2 additional cars and an approximate 800 sq. ft. studio above. Use Permit approval is required to allow an Accessory Structure over 1,000 square feet, in size, with a height of approximately 18 feet when a maximum of 15 feet is normally allowed. Variance approval is required to allow new construction without a front yard, where a minimum 20' yard is normally required.

BACKGROUND:

At the March 12, 2013 meeting, the Planning Commission CONTINUED this item to allow the applicant's architect time to prepare a perspective rendering of the proposal, to better illustrate its mass and height. The additional graphic has been provided for the Commission's review. It should be noted that while the rendering shows a standard size vehicle parked in the driveway, there will only be approximately 11' to 12' between the garage and the existing curb, so only a small sub-compact car could park perpendicularly to the door and street. In addition, the applicant has made two minor refinements, to address concerns voiced at the last hearing:

- The stairs and path into the studio (on the south side of the proposed garage/studio structure) will be extended past the studio and up on to the driveway of the main house, further clarifying the proposed structure as being "accessory" to the main residence.
- As neighbors expressed a desire to see the two structures as more similar, the applicant will paint the older main structure the same dark earthtone that is being proposed for the studio/garage. Two optional color schemes are provided for the Commission's review.

ADDITIONAL CORRESPONDENCE and DISCUSSION

One of the appellants has submitted an additional letter, which is attached. While many of the points raised have already been addressed in the appellants' earlier correspondence, staff would like to clarify some of this appellant's added claims:

- *APPELLANT'S CLAIM: the size of the applicant's proposal, being larger than its neighbors, is grounds for a denial.* All perceptions of "size" need to be viewed in the context of the lots' relative sizes and frontages. In proportion to its neighbors, the proposal has comparable or below its neighbor's lot coverage ratio or floor area ratio (FAR).
- *APPELLANT'S CLAIM: the height of the structure is 22 feet.* Given that the roof ridge is set back a minimum of 12' from the face of the garage, the measurement of "22 feet" is only descriptive of two-dimensional drawing. Again, one should refer to the perspective rendering provided.
- *APPELLANT'S CLAIM: the applicant's property does not have physical disadvantages when compared with either nearby properties within the subject R-6.0 Zoning District.* In response to the steep topography, both one- and two- story structures have been built throughout this hillside neighborhood since it was initially developed in the 1920's. A "strict adherence" to the R-6.0 development standards of the 1950's would create (or would have created, in the case of many neighboring properties) hardships, greatly limiting the usability of these hillside lots.

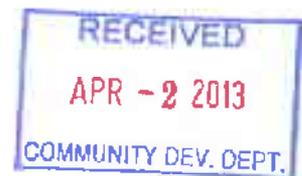
ATTACHMENTS

April 2, 2013 Letter from appellant
Draft Minutes on item from March 12, 2013
Draft Resolution No. PC 13-01
Draft Conditions of Approval
March 12, 2013 staff report and attachments
A. Site Context Map
B. Neighborhood Context Map
C. Applicant's Correspondence
D. Geotechnical Report (6 pages)
E. Appellants' packet (16 pages)

EXHIBITS

Revised Project Plans and photo renderings

April 2, 2013



Chair Ford and Members of the Planning Commission
525 Henrietta Street
Martinez, CA 94553

Re: **Planning Commission Meeting of April 9, 2013**
Agenda Item: 12PLN-0010 - Kramer

Chair Ford and Members of the Commission:

I urge you to uphold the appeal signed by 19 residents representing 11 properties (Suzanne Chapot et.al.) thereby denying application 12PLN-0010 - Kramer.

The project is disproportional to the neighborhood. There are 23 homes in the W. Arlington neighborhood including the applicant's property. The average home size is 1,809 sq.ft¹. The proposed accessory structure at 1,825 sq.ft. would be **larger than the average home** in the neighborhood.

Nine homes in the W. Arlington neighborhood have detached garages ranging in size from 225 sq.ft. to 420 sq.ft. with an average of 343 sq.ft.. These are each single story structures. The applicant's project at 1,825 sq.ft. would be **over four times as large as the largest garage and over five times as large** as the average garage structure in the neighborhood.

The height of the proposed structure is 22' from the street level to the peak of the roof. The measurement of 18 feet noted in the staff report is from the average slope on a side plan view. The view the neighborhood will most frequently experience walking or driving by is a **vertical rise of 22' from the street level**. This greatly exceeds all other detached garages on the street.

As stated in the staff report, the applicant is requesting a setback of 0 feet to the first floor garage where 3 feet is required and 2 feet to the second story where 20 feet is required by code. Two new homes were recently constructed on W. Arlington which are several doors from the subject property, the Bacon home (1048 W. Arlington - built 2001) and "Fortenberry" home (1042 W. Arlington - built 2004). These homes were constructed in a stepped manner with the second floor setback at least 20 feet from the property line and with a driveway in front of the garage doors setback far enough from the street to park vehicles off street and straight-in to the garage.

Allowing a two-story detached accessory structure with a 2 foot setback to the second story would be a significant step backwards from the good planning principles incorporated in the Bacon and Fortenberry homes. The proposed 0 foot setback to the

¹ Contra Costa County Assessor's Office records

first floor garage level is not disturbing, as most older *detached* garages, all of which are one story in height, are similarly sited. **The issue is the massing of a detached structure 22 feet high when viewed from the street and 46 feet long with a setback of 2 feet from the front property line for the second story.**

Findings for a variance to allow the reduced setback cannot be made. The enabling statute for variances, California Government Code 65906, states variances shall only be granted when, "strict application of the zoning ordinance deprives such property of privileges enjoyed by other property **in the vicinity** and under identical zoning classification." (emphasis added). The State Office of Planning and Research (OPR) Planner's Training Series, "The Variance" notes, "A variance is granted in order to bring the **disadvantaged** property up to the level of use enjoyed by **nearby** properties in the same zone." (emphasis added).

The consideration, "**in the vicinity**" as required by state statute and the comparison of the subject property to "**nearby properties in the same zone**" noted by the OPR has been lost in the review of this project. The question is whether the applicant's property has special circumstances, "including size, shape, topography, location or surroundings" where, "strict application of the zoning ordinance deprives such property of privileges enjoyed by other property **in the vicinity** and under identical zoning classification" (Gov. Code).

In order to consider the variance the applicant's property should be compared to nearby properties in the vicinity of the project, not to R-6 zoned properties in general. The nearby properties share the same slope. The nearby properties, however, do not share advantages experienced by the applicant's property. These include the large size of the lot and the existing driveway to the interior part of the property with a pad at the top of the drive adjacent to the home that could support relocating the second floor of the proposed project to a more interior portion of the applicant's property. Regardless of the question of eliminating or relocating the second story, the issue is **the applicant's property does not have physical disadvantages when compared to nearby properties** therefore findings for a variance cannot be made. As stated by the OPR, "Variance findings must describe the special circumstances that physically differentiate the project site from its neighbors. Further, the findings must specify the "unnecessary hardship" that would result from these circumstances in the event that a variance was not approved." There are no physical characteristics of the Kramer property that place it at a disadvantage **when compared to neighboring properties**.

The OPR also notes "[A] variance applicant may not earn immunity from one code provision merely by overcompliance with others." Features of the applicant's property such as the large size of the lot, above-average length of street frontage, comfortable compliance with FAR requirements (all examples of overcompliance) are not justifications for a variance. The standard to assess is whether the subject property has a physical disadvantage(s) when compared to surrounding properties. The applicant's property is not disadvantaged when compared to other properties in the neighborhood. In fact, the opposite is true.

I believe the review of this project transcends the neighborhood. I believe any neighborhood in the City of Martinez would be justifiably concerned over a proposal for a two-story detached garage structure that would be **larger than the average home in the neighborhood, over five times larger than the average detached garage with 22 feet of height and 2 feet of setback for the second story** from the property line at the **most visible part** of the property and where there are no valid variance findings for a second story setback reduction.

This is why 19 neighbors representing 11 properties have signed an appeal requesting the project be denied as proposed.

Sincerely,



Peter Dragovich
1040 Arlington Way
Martinez, CA 94553

DRAFT MINUTES – NOT APPROVED

Planning Commission

Regular Meeting

March 12, 2013

Martinez, CA

CALL TO ORDER

The meeting was called to order at 7:05 p.m. with all members present except Commissioners Glover, Keller, and Waggener, who were excused.

Staff present: Senior Planner Corey Simon

ROLL CALL

PRESENT: Donna Allen, Commissioner, Harriett Burt, Commissioner, Rachael Ford, Chair, and Paul Kelly, Commissioner.

EXCUSED: Jeff Keller, Commissioner, Sigrid Waggener, Commissioner, Kimberley Glover, Commissioner and James Blair, Commissioner (Alternate).

ABSENT:

AGENDA CHANGES

None

PUBLIC COMMENT

None

CONSENT ITEMS

1. *Minutes of January 22, 2013, meeting.*

On motion by Donna Allen, Commissioner, seconded by Rachael Ford, Commissioner, to approve the Minutes of the meeting of January 22, 2013. Motion unanimously passed 4 - 0. Yes: Donna Allen, Commissioner Harriett Burt, Commissioner Rachael Ford, Commissioner, Paul Kelly, Commissioner.

REGULAR ITEMS

2. *Kramer Residence 12PLN 0010. Public hearing on an appeal of the approval decision of the Zoning Administrator to grant Use Permit, Variance and Design Review approvals to expand an existing 2-car garage structure within the front yard, adding parking for 2 additional cars and an approximate 800 sq. ft. studio above. Use Permit approval is required to allow an Accessory Structure over 1,000 square feet, in size, with a height of approximately 18 feet when a maximum of 15 feet is normally allowed. Variance approval is required to allow new construction without a front yard, where a minimum 20' yard is normally required to be located at 1030 W. Arlington Way. (Continued from the January 22, 2013, meeting)*

Senior Planner Corey Simon presented the staff report, discussing the reason for the use permit requirement and a variance for reduced yard setbacks and design review for a hillside structure.

He reviewed the history of the application, approval of the Zoning Administrator and subsequent appeal by the neighbors. He also discussed the decision before the Commission tonight, context of the lot, existing structures, elevations, surrounding uses, site topography, applicable zoning regulations and the staff recommendation for approval.

Commissioner Burt discussed the possibility that the structure could eventually become another living unit in the future, and she asked what regulations would apply in that circumstance. Mr. Simon reviewed the state requirements related to secondary units, and he confirmed it was primarily a question of the fees involved.

Chair Ford asked about issues raised by some of the Commissioners to staff prior to the meeting, which Mr. Simon discussed.

Mr. Simon also discussed other building additions in the neighborhood and what variances or exceptions were requested and approved, in response to the contention by some that special consideration is being given to Mr. Kramer.

Commissioner Burt asked for an explanation of F.A.R. (Floor Area Ratio), and Mr. Simon reviewed the definition and implications for development applications.

On behalf of the applicant, architect Bill Wood reviewed the history of the application, changes made in response to staff requests, results of a public meeting held to hear concerns of the neighbors, and details of the final project design.

Commissioner Burt commented on the lack of a rendering showing the current building plus the proposed new building. Mr. Wood discussed how it could be accomplished, either through a photo montage or imposing a visual simulation onto a picture of the current building.

Chair Ford opened the public hearing.

GEORGENE ROSTKOWSKI spoke on behalf of some neighbors. She discussed attachment C, an email from Mr. Kramer to Mr. Simon that said he had been unable to find any neighbors who wanted to come to a public meeting. She indicated that was not true. She asked that the Commission overturn the Zoning Administrator's approval, citing a petition from the neighbors, and she discussed the reasons for the appeal. She was concerned about a second living unit onsite, inadequate setbacks, parking, and inconsistency with surrounding uses. She also cited sections of the accessory structure ordinance that would limit the size and placement of the secondary unit.

MARTA VAN LOAN expressed concern about the lack of a front setback and how it will affect parking/traffic safety in the neighborhood.

LEIGH PRASSE, neighbor across the street, questioned why a second garage is needed. She saw no need since there is already one onsite. She also questioned why a looming building is proposed, when 5 years ago another one was required to be set further back.

PAUL MARIANO asked, and Mr. Simon confirmed that the requirements and process would be the same if this were proposed for a secondary housing unit. He was concerned that the building could be used as a housing unit even though approved as an accessory structure. He also commented on the precedent that could be set if this is approved, and could change the character of the neighborhood forever.

Seeing no further speakers, Chair Ford closed the public hearing.

Mr. Wood responded to issues raised by the public, specifically how many cars can realistically park in the driveway currently, the reason for an additional garage to get more off-street parking, improved emergency vehicle access that will result, the unique eclectic nature of the neighborhood, the size of the structure in relation to total lot area as compared to other lots in the neighborhood.

Commissioner Kelly asked, and Mr. Wood confirmed that the beginning of the proposed stairs is approximately 10 feet from the street. Chair Ford asked about the location of the current garage and that it will remain; she also confirmed that the new garage will be further back from the current one.

Commissioner Allen asked if placing the new garage even further back was considered, and Mr. Wood said yes, but he explained it was not feasible due to the slope of the hill. He noted that a retaining wall was planned, which should stabilize the hill in the long run.

Chair Ford asked about the anticipated use for the area over the garage; Mr. Wood indicated possibly it would be used for a guest room.

Commissioner Burt discussed the addition at the Fortenberry house, noting she had voted against it when it came before the Planning Commission, primarily because of drainage and hydrology issues. Commissioner Burt asked what was meant by a closed drainage system, which Mr. Wood explained, including the advantages.

Commission Comment:

Commissioner Allen said she saw the large size of the lot as an advantage rather than a constraint. She acknowledged that the owners have a right to build an accessory structure or secondary unit, but her concern was the proposed setback of the new building and whether it was consistent with the character of the neighborhood. She noted that there are specific findings that have to be made in order to approve the variance, and she also expressed concern about the size and massing of the structure. She thought that story poles would be helpful in order to fully understand the size and placement.

Commissioner Burt commented on the historic nature of the area, with narrow streets and unique eclectic older homes. She acknowledged there is often some conflict between long-time residents and owners of newer or remodeled homes. She agreed with Commissioner Allen that the width of the lot should result in greater flexibility. She also observed that many of the homes in the downtown neighborhoods could not meet current standards regarding setbacks, parking, etc., and she discussed the City's regulations about accessory structures, noting that this

application does meet those standards. 01:15:00

On motion by Paul Kelly, Commissioner, seconded by Donna Allen, Commissioner, continue the item to the next meeting, April 9, 2013, meeting and to ask the applicant to provide a photo simulation of the accessory structure. Motion unanimously passed 4 - 0. Yes: Donna Allen, Commissioner Harriett Burt, Commissioner Rachael Ford, Commissioner, Paul Kelly, Commissioner.

COMMISSION ITEMS

Chair Ford requested a subcommittee be created to update the Policy & Procedures for the Planning Commission.

STAFF ITEMS

Mr. Simon updated the Commission regarding potential agenda items. Informed the committee that the only thing ready for the PC would be Kramer coming back on April 9th.

Commissioner Allen asked about the General Plan Update and whether the Commission would see the Draft before the EIR is posted. Mr. Simon gave status.

COMMUNICATIONS

The meeting adjourned at 8:46 p.m., to the next meeting of April 9, 2013.

Respectfully submitted

Approved by the Planning Commission
Chairperson

Mary Hougey

Rachael Ford

RESOLUTION NO. PC 13-01 [DRAFT]

**A RESOLUTION OF THE PLANNING COMMISSION
OF THE CITY OF MARTINEZ,
DENYING AN APPEAL UPHOLDING THE ZONING ADMINISTRATOR'S GRANTING
OF USE PERMIT, VARIANCE AND DESIGN REVIEW APPROVALS (12PLN-0010),
ALLOWING ADDITIONS TO A GARAGE, WITH EXCEPTIONS TO THE NORMALLY
PERMITTED HEIGHT AND SIZE OF ACCESSORY STRUCTURES IN THE R-6.0
ZONING DISTRICT, LOCATED AT 1020 WEST ARLINGTON WAY
(APN: 372-121-057)**

WHEREAS, the City of Martinez received a request for Use Permit, Variance and Design Review approvals ("Project") to allow additions to an existing garage ("Accessory Structures") at 1020 West Arlington Way, identified as APN 372-121-057 ("Project Lot", "Project site", "site", or "subject property"), within the City of Martinez; and

WHEREAS, the Project proposes to construct additions to the existing two-car garage by adding approximately 550 sq. ft. to for two additional enclosed parking spaces, and an approximate 800 sq. ft. second story studio (conditioned) space; and

WHEREAS, the zoning applicable to the property is R-6.0 (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-6.0 zoning district of 6,000 sq. ft., 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 (William Wood, Architect/Gus Kramer, owner) application for Use Permit, Variance, and Design Review approval, with certain conditions of approval at a duly noticed and held public hearing on July 18, 2012; and

WHEREAS, on July 30, 2012, the appellants (Suzanne Chapel, et at.) 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 January 22, 2013, 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, Variance and Design Review approvals (12PLN-0100) 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, Central Martinez 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 Planning Commission hereby makes the following findings with respect to the Appeal

(a) Appeal Issue #1

Allegation of the Appeal Issue #1: *"The Planning Commission set a precedent against exceeding the height requirements on February 11, 2003, when it denied a request to build a 22 ½ ft, high two-car garage at 1042 West Arlington Way, agreeing that the height was excessive."*

Finding to Deny Appeal Issue #1: The Planning Commission's action regarding the 1042 West Arlington Way project did not establish a precedent for the denial of future requests to grant exceptions to the normal height limitations. The Commission's February 2003 denial rejected a specific design which inappropriately placed a unbroken 22½ ft. "gabled end" high wall, with a full story above the garage, 3 ft. from the front property line.

Facts in Support of Finding: **The design for 1042 West Arlington Way, which, albeit revised, was approved by City Council on appeal in June 2003. The Council concurred with the Commission that the two story high "gabled end" wall was indeed inappropriate, but did approve the project with a shed roof above the one-story garage face. The applicant's design echo's the Council's 2003 approval for 1042 West Arlington Way, in that shed roofs are used to diminish the appearance of height and that the second level is deemphasized by the use of shed roofed dormer windows.**

(b) Appeal Issue #2

Allegation of the Appeal Issue #2: *"The proposed structure is not 'visually subordinate' to the main residence as required by code (sic). In fact, the structure rises to such a level that the lower parts of the main residence and yard are obscured."*

Finding to Deny Appeal Issue #2: The standard quoted by the appellants is

found in Section 22.12.085 C.5, which sets the minimum design requirements for the ministerial granting of a building permit for a Secondary Housing Unit, as required by State law. The Project is not a Secondary Housing Unit, but an Accessory Structure (garage and studio), subject to discretionary approval as an accessory structure over 1,000 sq ft. and 15' in height. The standard the appellant quotes is not applicable.

Facts in Support of Finding: The intent of the recently (adopted (2007) regulations on Accessory Structures is “balancing the appropriates of the accessory structure’s 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.” While the standards for ministerial approval of a Second Housing Unit and the discretionary standards applicable to the project both proscribe diminutive designs in relation to a main residence, the standards for Accessory Structures do not require the main structure remain visible from the street, nor do they preclude the placement of the Accessory Structure forward of the main residence. In its location and smaller height and size, the Project is appropriately diminutive to the main residence with its approximately 2,500 sq ft size and over 25’ building height. With the Project, the site is conforming to Lot Coverage and Hillside Lot FAR limitation.

(c) **Appeal Issue #3**

Allegation of the Appeal Issue #3: *“A structure of this size, purpose and placement sets a precedent, which will negatively impact and change the character of the neighborhood. The proposed structure does not conform to the established look and aesthetic of the neighborhood, which has been in existence for almost one hundred years.”*

Finding to Deny Appeal Issue #3: Due to the rugged topography, there currently exists many such nonconforming structures within the normally required minimum front yard, so the structure does conform to the established context.

Facts in Support of Finding: The hillside neighborhood is very eclectic, where many structures of widely varying architectural styles and uses (e.g. both garages and living spaces) have been built close to the street and within the “minimum 20’ front yard” as would normally be required in the R-6.0 Zoning District. The Project’s shed roof structure echoes that of the garages on the adjoining lots, and the structure, paralleling the existing slope, does not negatively impact the neighborhood as existing views and privacy enjoyed by neighbors is largely unaffected.

(d) **Appeal Issue #4**

Allegation of the Appeal Issue #4: *“The approval of the applicant’s request*

for Use Permit and a Variance would be precedent setting in negative way. Individuals with similar properties could be encroached by this approval to also ask for similar waivers, thus potentially allowing similar 'living spaces' to be built without conforming to setback, size and height requirements in areas zoned for single –family dwellings. Approval of this request will allow a detached structure containing an independent living space to be placed in the front yard of the primary residence."

Finding to Deny Appeal Issue #4: The approval of the Project does not set a precedent for additional waivers, as the findings for approval are distinct to the unique attributes of the subject lot, which are not shared by other lots along West Arlington Way or elsewhere within the R-6.0 Zoning District.

Facts in Support of Finding: **The subject lot has topographical constrains (a steep upslope) not typical of most lots within the R-6.0 Zoning District. Furthermore, the lot's atypical size (over 15,000 sq. ft., where 4,000 to 6, 000 sq. ft. is common) and length (180 ft., where 50' to 60 is common), both provide an opportunity for such an accessory structure that is proportional in building frontage, lot coverage size and Floor Area Ratio (FAR) to those of its neighbors.**

(e) **Appeal Issue #5**

Allegation of the Appeal Issue #5: *"The applicant stated at the zoning [administrator's] hearing that the expense of building on the uphill site was one reason for the request of a use permit and variance approval. Since all properties on the street built in the past 10 years have had to meet height, volume and setback requirements as a condition of approval, granting of these requested waivers will give the applicant an owner special privileges denied to other property owners on this street. In addition, all property owners on this street bear the burden of higher costs when repairing or upgrading their property, expenses that they justify as the cost of living on a hillside."*

Finding to Deny Appeal Issue #5: The approval of the Project does not a grant of special privilege, as the context for the granting of exceptions is larger than just one application on the subject street that was denied within the past 10 years.

Facts in Support of Finding: **As stated above, the denial of the exceptions requested at 1042 West Arlington Way addresses specific shortcomings of the design that had been proposed at that time. Meanwhile, a variance was approved within the past 10 years on the same block (057 Greet Street), where the same constraints of a steeply upsloping lot allowed for the placement of conditioned living space above a garage located within the R-6.0 Zoning District's normally required 20' minimum front yard.**

3) The Planning Commission hereby makes the following findings with respect to

the applicability of CEQA to the project:

- (a) 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 additions to the existing garage and addition of a studio space above the garage on the subject property. The Project involves only minor expansion of these existing uses, by the addition of 550 sq. ft. of space to the garage, and 800 sq. ft. to the for the studio above the garage, which will not result in an increase of more than 10,000 square feet. 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 only involves construction with minor modifications to the exterior of a small structure, such as a garage/studio (appurtenant) structure
 - (b) 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 garage is not historically significant
- 4) The Project is consistent with the Martinez General Plan policies and with the Residential Slope Density Ordinance land use designation of the Central Martinez 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 Central Martinez 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 addition to the 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 garage/studio will be smaller than the single-family residences located in neighborhood. The height of shed roof forms of the addition is proposed to echo those of the existing nearby garages.

- (b) **30.532** - Central Martinez Specific Area Plan, Housing Policies and Programs: ***New Construction should be reviewed to ensure its compatibility with the neighborhood. (applicable guideline; 30.5324; Protect the integrity of central neighborhoods by permitting only new construction which respects the scale of existing housing).***

Facts in Support of Finding: The existing residential character of the neighborhood will continue to be preserved with the addition to the Accessory Structure while respecting the established physical patterns of the neighborhood. The scale of the garage/studio will be smaller than the single-family residences located in neighborhood. The 18' height of the shed roof forms of the addition is proposed to echo those of the existing nearby garages. Architectural materials and site design quality are comparable or exceed those of the existing residence and nearby residences.

- 5) As set forth in the Zoning Ordinance at §22.12.265 "Accessory Structures," exceptions may be permitted with the granting of a Use Permit. 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 18 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 Central Martinez Specific Area Plan: *Group 1 Residential*. The General Plan provides for residential

development in the area of the Project. The Project consists of addition to an existing residential Accessory Structure, and will not alter the stability of existing land uses on the site. Furthermore, the Accessory Structure is 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 Central Martinez 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-6 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 listed include garages, as is proposed for the Project, but may include a studio use, incidental to the main residence, as well.

The Project consists of an addition to the existing garage and addition of a studio space above the garage that's on the subject property. The Project includes only a minor expansion of these existing uses, by the addition of 550 sq. ft. of space to the garage, and 800 sq. ft. to the for the studio above the garage. The 550 sq. ft. garage expansion will provide parking for two additional cars (for a total of four) in a location where topography has precluded construction of a garage with a typical driveway (e.g. without a severe slope) where normally a resident could have such auxiliary off-street parking. The proposed 800 sq. ft. studio above is not atypical for a lot of over 15,000 sq. ft. in size, but again topographical constraints preclude the placement of such a structure in the more common "back yard" location. The garage and studio are set into site's step upsloping lot's existing grade, and the second level studio is largely located within the shed roof of the garage, with only dormer-type window. These design features reduce the

actual and visual height of the structure, which is 18', only 3' above what is typically allowed for such accessory structures.

The proposed additions to the Accessory Structure with the proposed height and size are consistent with the purposes of the R-6.0 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 garage and a studio space - without independent cooking facilities – and thus incidental to the main residence.

Moreover, the proposed addition to the Accessory Structures will not have adverse effects on the light, air and privacy of neighboring properties and owners of such properties. The Accessory Structure is located on the relatively large 15, 000+ sq. ft parcel (where only 6,000 sq. ft. is required) and how the structure is "bunkered into" the hillside, and therefore has no adverse impact on neighbors' views or privacy. The structure, located toward the front of the property, will largely be below the line-of-sight from neighboring properties.

Furthermore, the proposed 1825 sq. ft. structure, as expanded and remodeled, will match the roofing material and building colors of the existing structures. The materials of the proposed additions include stucco siding with masonry accents, with a 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 be compatible with the style of the existing structures, as well as to fit in with the adjacent homes and garages on West Arlington Way 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 uncharacteristically large lot (approximately 15, 000 sq. ft., where the minimum required is 6,000 sq. ft), and context of the steeply up-sloping lot, allows this single family site to accommodate the proposed two-level Accessory Structure without any negative impacts on neighbor's views and privacy, as the new structure is in the front yard and at the site's lowest elevation, leaving the views of uphill neighbors, and privacy of downhill neighbors across the street, unaffected. Thus 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 Title 22 of the Martinez Municipal Code.**

Facts in Support of Finding: With the exception to building height and size, and the requested variance to minimum front yard requirements, the Project complies with all other applicable provisions of Title 22 - Zoning of the Martinez Municipal Code, including requirements for minimum rear and side yards, site coverage, Hillside FAR (Floor Area Ratio) as adjusted with the subject Use Permit and Variance approvals, of the R-6.0 Zoning District and the intent and definition of "Accessory Structures."

- 6) As set forth in the Zoning Ordinance at §22.12.020 "Variances," exceptions are may be permitted with the granting of a Variance. The Zoning Ordinance provides for a Variance for proposed construction within the 20' minimum front yard normally required within the R-6.0 Zoning District. Based thereon, the Planning Commission hereby makes the following findings with respect to the granting of a Use Permit for the Project.

(a) Strict or literal interpretation and enforcement of the specified regulation would result in practical difficulty

Facts in Support of Finding: The enforcement of the typically required front yard, and wall height limitations within the front yard, would result in practical difficulty, in that significantly more excavation would be required on the steeply sloping lot, resulting in higher and therefore uncharacteristic massive retaining walls toward the rear of the structure, and with a concomitant reduction in the building envelope, further limiting options for construction beyond those typically found in the R-6.0 District.

(b) Strict or literal interpretation and enforcement of the specified regulation would result in practical difficulty

Facts in Support of Finding: The property's extreme upslope constitutes exceptional conditions, in that such slopes are generally not found in other properties in the R-6.0 Zoning District. Compliance with the typically required front yard setback would generally not create the difficulties of excavation and wall construction that would result on the subject property.

(c) Strict or literal interpretation and enforcement of the specified regulations would deprive the applicant of privileges enjoyed by the owners of other properties;

Facts in Support of Finding: Section 22.12.220.B.4 of the Zoning Code allows construction of a garage, on such steeply sloping lots, with a minimum front yard of 3 feet. New homes with such a minimal yard have recently been built in the vicinity. Furthermore, the steep topography of the neighborhood has lead to the established practice on the lots surrounding the site – and on both sides of West Arlington Way - where garages have been built without any front yard and typically at the front property line. The applicant's proposal is for no front yard at the garage, and to allow habitable space and above, within the typically required 20 foot front yard. But the proposed upper level is placed within the roof structure of the one story

garage below, minimizing the appearance of height, and more closely echoing the massing of neighboring properties. The strict enforcement of the minimum required 20' front yard would deprive the applicant of privileges enjoyed by the owners of other properties, in that the visual intrusion of the applicant's proposal into the typically required front yard is comparable to the intrusion of the surrounding garage structures on neighboring lots.

- (d) **Granting of the variance will not constitute a grant of special privileges inconsistent with the limitations of other properties;**

Facts in Support of Finding: Granting this variance is not a special privilege, in that the proposed encroachments into the typically required 20' front yard are needed to compensate for the site's steep topography, which is not a limitation typically encumbering properties within the R-6.0 Zoning District. Furthermore, the lot's atypical size (over 15,000 sq. ft., where 4,000 to 6,000 sq. ft. is common) and length (180 ft., where 50' to 60 is common), both constitute unique circumstances for such an accessory structure that is proportional in building frontage, lot coverage size and Floor Area Ratio (FAR) to those of its neighbors. The granting of the variance would neither obligate the City to approve such a variance for lots of more typical size and/or width, nor would it preclude other property owners in a comparable situation and with similar circumstances and limitations to apply for a variance that can meet all applicable standards and findings for the granting of such a variance.

- (e) **The granting of the variance will not be detrimental to the public health, safety, or welfare, or be materially injurious to property or improvements in the vicinity;**

Facts in Support of Finding: The quality and design of the proposed structure will be either at or above that of the surrounding homes in the neighborhood, and the proposed residence will not significantly encroach into views enjoyed by existing residents; and therefore the granting of the variance will not be detrimental to the public health, safety, or welfare, or be materially injurious to property or improvements in the vicinity.

7) As set forth in the Zoning Ordinance at §22.34.050 D, Design Review approval is required prior to the issuance of a building permit where the natural grade of the permit site under the proposed structure has an average slope of 10% or greater; and to allow the proposed tree removal. Based thereon, the Planning Commission hereby makes the following findings with respect to the granting Design Review and Tree Removal approval for the Project.

- (a) **The project complies with all other applicable provisions of the Martinez Municipal Code involving the physical development of buildings, structures and property, including use restrictions;**

Facts in Support of Finding: The development standards for the R-6.0

District are complied with, and where applicable, the applicable standards for the granting exceptions with Use Permit and Variance approvals as discussed above, have also been meet.

- (b) The project provides a desirable surrounding for the occupants and neighbors;**

Facts in Support of Finding: The proposed residence is designed as to minimize visual intrusion into established hillside residential context. The building's massing echos the hill form to reduce the appearance of mass, and colors will match those of the existing residence.

- (c) The project has a harmonious relationship with existing and proposed neighboring development;**

Facts in Support of Finding: The accessory structure's size is proportional to the unusually long frontage of the subject property, with the resulting site coverage and floor area ratios or below those of the surrounding lots within this established hillside neighborhood. The roof form of the proposed structure echos those of the nearby garage on similar uphill lots.

- (d) The palette of exterior colors is harmonious and architecturally compatible with the surrounding environment;**

Facts in Support of Finding: The accessory structure's earth tone stucco and stone access, with a dark composite shingle roof, will match those of the existing residence and thus blend into the established residential landscape.

- (e) A limited number of materials is used on the exterior of the project;**

Facts in Support of Finding: Only stucco siding and stone wainscoting and accent details are proposed for the accessory structure.

- (f) The project has exterior lighting appropriately designed with respect to convenience, safety, and effect on occupants as well as neighbors;**

Facts in Support of Finding: As an accessory structure to a single family home, only minimal exterior lighting is proposed.

- (g) Effectively concealing work areas, both inside and outside of buildings, in the case of non-residential facilities; (Not applicable)**

- (h) Undergrounding all utility boxes unless it can be shown that they can be effectively screened from the view of the general public; (Not applicable - no utility boxes are proposed as part of the project)**

- (i) Designing the type and location of planting with respect to the preservation of specimen and landmark trees, water conservation as**

set forth in Chapter 22.35, and maintenance of all planting;

Facts in Support of Finding: Two of the three established redwood trees along the street frontage will be retained; preserving property's generally wooded appearance from the street. The removal of the northerly most redwood, and two smaller shrub-like trees, for the construction of the garage addition and stair to the second level studio, will not significantly alter this wooded appearance. Only minimal ground cover plantings is proposed adjacent to the garage, conforming to water conservation standards.

- (j) **Establishing a circulation pattern, parking layout and points of ingress and egress (both vehicular and pedestrian), designed to maximize pedestrian safety and convenience and to minimize traffic congestion resulting from the impediment of vehicular movement. When applicable, access for handicapped individuals should be considered. (Not applicable or needed for proposed project.)**
- (k) **Ensuring that all signs be designed so that they are in scale with the subject development, and will not create a traffic hazard. Emphasis is placed upon the identification of the use or building rather than the advertising of same (No advertising is proposed with the project.)**
- (l) **Views are substantially preserved from nearby properties;**

Facts in Support of Finding: The proposed Accessory Structure is located near the site's lowest elevation, leaving the views of uphill neighbors, and privacy of downhill neighbors across the street, unaffected.

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 grants Use Permit, Variance and Design Review approvals (12PLN-0010) 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 9th day of April, 2013:

BY: _____
Corey M. Simon
Senior Planner/Clerk Pro Tem

CONDITIONS OF APPROVAL
AS APPROVED BY PLANNING COMMISSION [*DRAFT*]

Applicant Name: **Bill Wood, Architect; Kramer - two level accessory structure**

Location: **1020 West Arlington Way (APN 372-121-057)**

I. Description of Permit

These conditions apply to and constitute the granting of Use Permit, Variance and Design Review approvals (12PLN—0010) to allow additions to an existing garage, resulting in two-level Accessory Structure on Hillside Lot (1,022 sq. ft. garage with a 802 sq. ft. studio above), within the normally required minimum front yard of an existing residence. Use Permit approval is required to allow an Accessory Structure with a height of approximately 18' when a maximum of 15' is allowed, and with a size exceeding 1,000 sq. ft. and 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
<i>Revised</i> Site Plan, Building Plans and Elevations.	April 3, 2013	William Wood, Architect	8
Photo of existing conditions and 2 options for color schemes	April 3, 2013	William Wood, Architect	3
Geotechnical report	June 20, 2012	GFK & Associates	6

All construction plans 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, Building Division or Engineering Division as noted.

III. Planning Division requirements for Site and Architectural Plans

Building permit plans shall incorporate the following design modifications and/or features, or as approved by Planning Director.

- A. No foundation or structural elements may encroach into the right-of-way, except for a cantilevered balcony and/or roof eaves.

- B. The depth of roofs eaves on all four elevations shall generally be the same, (approximately one foot). Gutter and roof eaves shall be extended forward from the garage's front elevation, as approved by staff on building permit plans.
- C. Exterior materials and colors shall be comparable to those of the existing main residence, as noted on plans.
- D. All exterior areas where existing landscaping is to be removed (e.g. adjacent to the new driveway and studio entry) shall be re-landscaped. Landscape plans shall be provided with the building permit application and shall:
 - 1. Provide a new vine planting area between the existing and new driveway, approximately 1½ foot deep (or as available per ADA compliant sidewalk/driveway design as required by the City Engineer).
 - 2. Be prepared in accordance with the applicable water conservation and landscaping ordinance.
 - 3. Specify trees of minimum 15 gallon size
 - 4. Specify shrubs of minimum 5-gallon size
 - 5. Provide either lawn or a continuous ground cover with appropriate sizes and spacing to provide complete coverage within 3 years.

IV. Engineering Division requirements

Building permit plans and construction shall incorporate the following design standards, modifications and/or features, or as approved by the City Engineer.

- E. The project Soils Engineer and/or the Design Engineer shall be responsible for on-site inspection and quality control of grading operations. Pad elevation and compaction certification shall be submitted to the City prior to foundation inspection. All grading and retaining wall construction shall be done in accordance with the soils Engineer's recommendations (report by GFK Associates, Geotechnical Consultants, dated June 11, 2012), and to the satisfaction of the City Engineer.
- B. Pursuant to Chapter 12.30 of the Martinez Municipal Code, frontage improvements shall be made as per the requirements of, and to the satisfaction of, the City Engineer, including but not limited to:
 - 1. A sidewalk across the property's frontage. Where the construction of such sidewalk requires a retaining wall behind the sidewalk, such retaining wall shall have a trim cap and decorative finish, such as

- stucco or cultured stone to match the building's finishes, or split face masonry block, or comparable finishes as approved by staff. An encroachment agreement for construction of any retaining wall within the right of way will be required.
2. Repair and/or replacement of any damaged curb, gutter and/or determined by an inspection from the City Engineer's office.
 3. Replacement of existing, and construction of new, sidewalk and driveway to be designed to meet current ADA standards, unless otherwise approved by the City Engineer.
 4. Existing pavement along the frontage of the property, to centerline of the street, that is in a deteriorated or hazardous condition shall be repaired, replaced, or reconstructed to the satisfaction of the City Engineer. The scope and limits of required frontage improvement shall be determined during a field inspection by the City Engineer's office.
- F. Finished floor elevation of garage shall meet building division requirements (approximately 1.2' above gutter grade).
- G. 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.
- H. 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.
- I. Erosion control measures shall be implemented per plans approved by the City Engineer for all grading work not completed before October 1.
- 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. All new utility distribution services on-site and off-site shall be installed underground.
- O. 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.

V. Building Permits Requirement

Building permit plans shall incorporate the following design modifications and/or features, or as approved by the Chief Building Official.

- A. All foundations and retaining walls will require structural calculations by licensed Engineer.
- B. Construction at rear elevation and/or adjacent to property lines shall be fire rated.
- C. Spiral staircase and landing shall conform to all applicable Building Code requirement.

VI. Standard Conditions

- A. Exterior materials, finishes and colors of the accessory structure shall match those of the existing residence and 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. Construction shall comply with all applicable City and State building codes and requirements including energy conservation requirements.
- G. 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.
- H. 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.
- I. 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.
- J. There shall be no parking of construction vehicles or equipment on the surrounding residential streets, including all workers vehicles.

VII. 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 permits and approval shall expire in one year from the date on which they became effective (unless extended under C) 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 March 12, 2013.
- C. The time extension of the expiration date, March 12, 2014, 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 permittee, Gus Kramer/Bill Wood, Architect, 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 12PLN-0010, 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 Gus Kramer/Bill Wood, Architect, the City, and/or the parties initiating or bringing such action.

- F. Gus Kramer/Bill Wood, Architect 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 Gus Kramer/Bill Wood, Architect desires to pursue securing such approvals, after initiation of such litigation, which are conditioned on the approval of such documents, in a form and under conditions approved by the City Attorney.
- G. In the event that a claim, action or proceeding described in Subsection E, above, is brought, the City shall promptly notify Gus Kramer/Bill Wood, Architect 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 Gus Kramer/Bill Wood, Architect 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 Gus Kramer/Bill Wood, Architect 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 Gus Kramer/Bill Wood, Architect 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. Gus Kramer/Bill Wood, Architect 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.