

DEPARTMENT: Planning By: Sarah Williams, Planning Manager Phone: 966-5151

RECOMMENDED ACTION AND JUSTIFICATION: (Policy Item: Yes ___ No X)

Approve request with recommended findings and conditions, direct County Counsel to prepare agreement and authorize the Chair of the Board of Supervisors to execute the agreement on the County's behalf.

The recommended action will allow the existing 770 square foot house and deck to remain, but will allow no expansions of the structure. The property owner, and all future property owners, will be obligated to ensure that the house does not affect the public's interest in the easement.

BACKGROUND AND HISTORY OF BOARD ACTIONS:

None

LIST ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:

ALTERNATIVES:

- 1) Modify the terms and conditions of the proposed agreement.
- 2) Deny request and require that the structure be moved out of the setback area.
- 3) Postpone action on request, and require the applicant to apply for a variance.
- 4) Postpone action on request, and require the applicant to pursue a lot line and easement adjustment.

NEGATIVE ACTION (denying the agreement) would mean that existing structure could not remain in the setback area.

COSTS: (X) Not Applicable

A. Budgeted current FY \$ _____

B. Total anticipated Costs \$ _____

C. Required additional funding \$ _____

D. Internal transfers \$ _____

COSTS: () 4/5th Vote Required

A. Unanticipated revenues \$ _____

B. Reserve for contingencies \$ _____

C. Source description: _____

Balance in Reserve Contingencies, If Approved: \$ _____

SPECIAL INSTRUCTIONS:

List the attachments and number the pages consecutively:

Memorandum to the Board with Attachments:

1. Detailed Chronology
2. Public Works Comments
3. Section 17.108.130.A, County Code

CLERK'S USE ONLY

Res. No.: 98-398 Ord. No.: _____

Vote - Ayes: _____ Noes: _____

Absent: _____ Abstained: _____

Approved Denied

Minute Order Attached No Action Necessary

The foregoing instrument is a correct copy of the original on file in this office.

Date: _____

ATTEST: _____

MARGIE WILLIAMS, Clerk of the Board

By: _____

Deputy

ADMINISTRATIVE OFFICER'S RECOMMENDATION:

This item on agenda as:

Recommended

Not Recommended

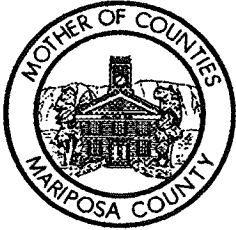
For Policy Determination

Submitted for Comment

Returned for Further Action

Comment: _____

A.O. Initials: Jh



COUNTY of MARIPOSA

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

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MARIPOSA COUNTY BOARD OF SUPERVISORS

MINUTE ORDER

TO: ED JOHNSON, Planning and Building Director
FROM: MARGIE WILLIAMS, Clerk of the Board *MW*
SUBJECT: Agreement Request by Jack Andrews to Allow a Residential Structure to Remain in the Zoning Ordinance Front Yard Setback Area; Res. 98-398

THE BOARD OF SUPERVISORS OF MARIPOSA COUNTY, CALIFORNIA,

ADOPTED THIS Order on October 20, 1998

ACTION AND VOTE:

B) PUBLIC HEARING to Consider Request by Jack Andrews for Agreement to Allow Residential Structure to Remain in the Zoning Ordinance Front Yard Setback Area; APN 014-150-036

BOARD ACTION: Ed Johnson advised that the structure in question is located within the setback area, and was constructed without a permit – in order to correct the problem, the entire structure would need to be moved and relocated. Sarah Williams, Planning Manager, presented the staff report, and advised that a deck has also been added and a request has been received for an addition to the existing structure. They received a letter on Monday indicating that the setback may be different than what they presented in their written report. Staff responded to questions from the Board relative to the proposed agreement in regard to the possibility of a future change in the road; possibility of doing a lot line adjustment and how that process would work in this matter; relative to other issues associated with the residence, such as the septic system and the proposed system for the expansion of the structure.

Public portion of the hearing was opened and the following input was provided.

Jack Andrews, property owner, presented a drawing of the site and improvements and discussed the location of the road. He advised of his contacts with the County when they first constructed the tent structure and their reasons for choosing the location of the dwelling. He advised that his eldest son is a California registered contractor and they followed his instructions for the construction, and the building inspector did not see any problems with the structure being in compliance with the building codes. He advised that when the structure was originally built, they were operating on very limited funds and did not have funding available to obtain a permit, and he requested that the Board members visit the site. He commented on his son's situation and the need for him to have housing for his son and grandson. He referred to the setback measurements that were provided, and he stated that the neighboring property owner

is a land preserver and not a developer and he does not feel that the road will need to be changed in the future.

Eric Andrews, occupant of the dwelling in question, advised that since they requested a building permit, a registered engineer has put his stamp on the house as it stands. He stated that he felt the easement for the road is 55 feet from the center of the easement for the "old road" and he feels he is more than that.

Jack Andrews stated that when Mr. Camacho (Planner II) originally inspected the house, he said it was okay. Later Mr. Camacho phoned him and advised that the easement is in a different location than the road, and the location of the easement is what would be used to determine the setback requirements.

Eric Andrews responded to questions from the Board relative to the location of the fence line and utility easements and the road and driveway.

Jack Andrews advised that the existing septic system consists of two-55 gallon barrels set in a septic tank mode with leach lines, and they are planning to install a system that will meet the codes with the permit to add to the house. He advised of the proposed location in relation to the property setbacks.

Eric Andrews advised that during a site inspection this morning, the Health Department staff could not find any problem, and he knew this situation would change with this permit process.

Jack Andrews apologized for building the house without a permit and stated he felt that he needed to do this in order for his family to have a place to live, and they are working to correct the problem.

Discussion was held relative to continuing with the hearing this date or scheduling time on another date. Supervisor Reilly requested that the matter be continued to allow staff to provide information on any other outstanding issues that may exist in regard to being able to obtain the necessary permits. Board concurred with continuing with the hearing at this time, and with continuing the 6:00 p.m. Public Hearing to after this matter.

The following provided additional public input.

Michael Noriega, neighboring property owner on Blackberry Creek Road, stated he is also representing John Alger. He stated he understands that someone's house is on the line; however, he is very upset with the County that he has to be involved to this degree in a dispute with a neighbor over something that the County regulates. He clarified his understanding of the easement and location of the road and stated he did not feel that anyone is considering the affect that this odd-shaped and illegal dwelling has on property values. The dwelling started as a tent, a \$4,000 to \$5,000 Yurt on a permanent foundation with a sizeable deck, and their real estate agent advised them that this was temporary when they purchased their property. There is no screenage and it is an imposition of their privacy and affects their plans to build a barn. He stated that he feels they are actually in the setback area by thirteen feet according to an engineer's plan, and this divides the house in half. The original site plan shows a square structure versus a round structure and an incorrect easement. He discussed the road, advising that it is narrow and dirt, and a real road has not been established. As a neighbor, he stated he did not observe the son (Eric Andrews) living in the tent, only visiting – he stated he lived in Merced. The original complaint was for a two-room expansion at the back and the foundation is already there, so he feels they have funding available. He stated he does not feel that the \$2,500 the property owners say was spent reflects an accurate investment in the actual improvements. He noted they have been friends; however the Andrews built without a permit and were aware of the process. In his investigation, he feels that there is frustration with the County as people do not expect for anything to happen in situations like this. He stated that this structure as a tent existed before 1994, and was made permanent in 1995. He referred to the Planning staff's written report, and challenged the statement that there will be no adverse effect on the rural community due to having a dwelling so close to the road. He stated he feels that any proposed agreement is unfair to the citizens of the County. In his personal request for a barn permit, he requested an additional nine feet to be within the setback area which would be a similar situation as exists with this subject structure, and he was refused the same consideration while trying to go through the proper process. He presented photographs of the structure and surrounding area. He noted that development was planned for the area previously and Jack Andrews was able to stop it. He questioned if engineered drawings for the structure exist, and he questioned the weight on the center pole of the structure and the Andrews' precaution with using cable. He asked if the well met code requirements. He stated he feels the Andrews have knowingly and admittedly broken the law. He moved his family here to have a little space and for their asset (property) to increase in value. He noted that Jack Andrews ran for County Supervisor and knows the system and requirements for permits. He stated that he feels that claiming illness and poverty is no excuse. He stated that he feels that the proposed agreement places the family in a

bad position; but he knows they want to stay and will sign anything. With the agreement, he feels that they may not feel good about making improvements as the structure may need to be moved in the future if property in the area is developed. He further stated that he feels it would be a cruel joke to make the Andrews pay all fees and taxes on something that may need to be torn down. He stated that he does not feel that a homeless situation will be created as Eric and his son could move back to the house with his family where they lived during construction; and he noted that his parents raised three children in the home. He stated he feels the Andrews should go through a process of compliance – that a negotiated agreement sends a negative message to the community. He feels the County could become vulnerable to legal action and it would set a negative precedent. He noted that he is in advertising and it would be his intent to make every resident aware if an agreement is approved – he stated everyone is watching this case. He stated he feels it is up to the Board to enforce the law and follow through with its obligation to citizens. He requested that the portion of the structure within the setback area be removed, and he stated he is not opposed to a lot line adjustment. He posed the following questions: has there been an electrical inspection, a County engineer inspection, a septic inspection; why occupancy of the structure is being allowed if it has been red-tagged; whether previous law-breakers have been allowed to continue in this type of situation; what will happen if an agreement is approved and the Andrews do not pay; and whether back property taxes will need to be paid. He reiterated a previous statement that he does not want to be put in this situation – he feels an anonymous complaint should have been handled by staff or an enforcement agency. He commented on petitions that were presented.

Wilford VonDerAhe, neighboring property owner, stated he does not want to be here and he wishes the County was enforcing its laws. He asked what the criteria would be for the County to grant a waiver or abandon a setback requirement. He stated the 60-foot easement along the Andrews parcel is lined up to his 114 acres and he has plans to bring his parcel map back up-to-date. He stated he feels the Andrews know and are familiar with the County's system and requirements should have been complied with. He discussed the topography of the area. He stated he feels it could be a problem with having the dwelling so close to the road without screening if he develops in the future, and he stated he feels the hardship involved.

Amy Ehrman, property owner in the area, stated she is surprised at the selection of the site for this dwelling as the Andrews own eleven acres. She questioned his concern for his neighbors with the installation of the septic system that he described. She stated she does not feel this is a hardship case.

Brenda Archibald read a letter into the record from herself and her husband. She objected to the construction of the dwelling without a permit and within the setback area and requested prompt enforcement of the building codes. She stated she feels that this was knowingly done and if this is allowed to continue, others will build in the same manner and worry about it later. She stated they have paid extra for their assessment for road maintenance and the Andrews have raised questions and have not contributed. She noted that Jack Andrews is a builder and a developer and knows the rules. She feels that this is unfair to others who abide by the rules.

Laura Noriega asked why the letter noticing this hearing did not go to all property owners in the area. Sarah Williams responded relative to the noticing requirements.

Kenneth Rather, resident of the area – lives on Buckskin Road, stated he feels that people should follow the rules and build properly.

Rebuttal by the applicant.

Jack Andrews referred to the construction of the septic system and stated it is the same as their cement system, and it is within the County requirements for location. Just the 55-gallon barrels do not meet the code requirements, but they are functioning well.

Eric Andrews stated this is not a standard built structure and he has submitted plans to the Building Department, and he commented on the placement of the septic system.

Jack Andrews commented on their selection of the dwelling site, and advised that it was based on the view from their house and improvements. He stated the two houses are 214 feet apart, and he asked that a representative of the Board look at the area and the structures.

Public portion of the hearing was closed. Staff reviewed their recommendation and options. Staff and Jeff Green, County Counsel, responded to questions from the Board relative to the disagreement over the actual location of the road and easement. Ed Johnson advised that they know the location of the easement and the location of the road does not make a difference. Board commenced with deliberations. Staff responded to additional questions from the Board relative to timeframes for completing a lot line adjustment

and process to move the easement. (M)Pickard, (S)Balmain, Res. 98-398 adopted allowing two months for agreement to be reached and the process to be initiated for a lot line adjustment; if agreement is not reached, the request is denied and direction is given for the structure to be removed; and direction was given for the Health Department to conduct an inspection immediately. Motion was amended, agreeable with maker and second, to include direction that the structure will be removed within six months if agreement is not reached. Further discussion was held. Jeff Green, County Counsel, clarified that if at the end of the two months agreement is not reached and all conditions are met for occupancy, the structure should be unoccupied until removal, and that six months would be allowed for removal. Ayes: Reilly, Balmain, Parker, Pickard; Excused: Stewart. Hearing was closed.

cc: Dr. Mosher, Health Officer
File