

94-199

MARIPOSA COUNTY
BOARD OF SUPERVISORS

AGENDA
ACTION FORM

DATE: May 24, 1994
AGENDA ITEM NO.: 12-A

DEPARTMENT: Planning BY: Duane Hall PHONE: 966-5151

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

Resolution denying the appeal and upholding the Planning Director's determination that the Planning Department cannot take zoning enforcement action on an intended use of the property. Justification for the recommended action is provided in the attached memorandum.

BACKGROUND AND HISTORY OF BOARD ACTIONS:

None.

LIST ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:

ALTERNATIVES: (1) Continue hearing.

NEGATIVE ACTION would result in appeal being granted and Planning Director's determination being overturned.

COSTS: () Not Applicable

A. Budgeted current FY \$ _____

B. Total anticipated costs \$ _____

C. Required additional funding \$ _____

D. Internal transfers \$ _____

SOURCE: () 4/5ths Vote Required

A. Unanticipated revenues \$ _____

B. Reserve for contingencies \$ _____

C. Source description: _____

Balance in Reserve for Contingencies, if approved: \$ _____

SPECIAL INSTRUCTIONS:
List the attachments and number the pages consecutively:

1. Memo to Board
2. Notice of Appeal and supplemental information
3. Planning Director's Determination
4. Rural Home Industry standards
5. County Counsel Opinion

CLERK'S USE ONLY:

Res. No.: 94-199 Ord. No. _____

Vote - Ayes: 5 Noes: _____

Absent: _____ Abstained: _____

Approved () Denied ()

(X) 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
County of Mariposa, State of California

By: _____
Deputy

ADMINISTRATIVE OFFICER'S RECOMMENDATION:
This item on agenda as:

Recommended

Not Recommended

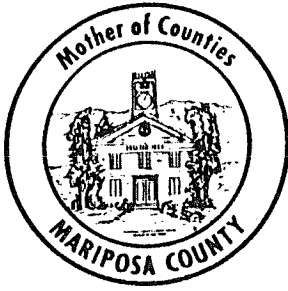
For Policy Determination

Submitted with Comment

Returned for Further Action

Comment: _____

A.O. Initials: CH



Mariposa County Planning and Building Department

EDWARD J. JOHNSON
Planning Director

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MEMORANDUM

May 17, 1994

TO: Mariposa County Board of Supervisors

FROM: Duane Hall, Associate Planner *DH*

SUBJECT: Appeal of Planning Director's Determination on APN 15-060-57; Tom and Barbara DeVries, et al., appellants

Background

On April 11, 1994 the Planning and Building Department received a request to investigate the issuance of a building permit to APN 15-060-57 and the intended uses of the building for compliance with the County Zoning Ordinance and Building Code. The Acting Planning Division Director responded that the building permit for a 32' x 75' residential/garage storage building was properly issued in accordance with County Code, there was no violation of the County Building Code or Zoning Ordinance, and the Planning Department could not take action on an intended use of the property (Attachment #2). The appellants are appealing the Planning Director's determination that the Planning Department cannot take zoning enforcement action on an intended use of the property.

Recommendation

Staff recommends that the Board adopt a resolution denying the appeal and upholding the Planning Director's determination.

Discussion

The subject property is a 11.2 acre parcel located on the west side of Smithers Road approximately 1/3 mile north of East Westfall Road. It is accessed by Smithers Road which is a non-County road approximately 12' to 15' in width and in poor condition. Presently it appears there is a mobile home and several trailers located on the property. A building permit for a 32' x 75' residential garage/storage building has been issued to the property. Building pads on the property have been graded but the building has not yet been constructed. The building permit application was for a "garage and storage building" and the building permit was issued for a "M-1" occupancy, i.e. non-occupancy residential purposes only. To be used for a woodworking business, the approved occupancy rating for the building would have to be changed through the building permit process. The Planning and Building Department has no proposal, statements, information, or other objective evidence to indicate that the building will

Memo to Board re: DeVries Appeal

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be used for any purpose other than as a residential garage/storage building. In addition, the Planning and Building Department has no proposal from the property owner or other objective evidence which indicates the property owner has established a rural home industry on the property.

The appellants state it is their understanding, based on conversations with the property owner Richard McGrath, that the property owner proposes to establish a woodworking business as a rural home industry on the property. In addition to two other requests, the appellants are requesting that the Board “enjoin Mr. McGrath from pursuing his stated, intended use for the property because the use is not consistent with the County’s Ordinance allowing Home Enterprises and Rural Home Industries since it will be ‘detrimental to ... the adjoining residential areas’ due to noise from the commercial-size diesel generator, saws, wood planer and other industrial equipment; increased heavy traffic on the unpaved, narrow road; and appearance incompatible with a residential neighborhood”. The appellants are requesting that the County take action on a rural home industry use which has not yet been established nor for which a building permit has been applied for or issued.

The Planning Department conferred with County Counsel to determine the actions the Board may take in response to the appeal. It is County Counsel’s opinion (Attachment #4) that the Board of Supervisors does not have the statutory authority to determine that a rural home industry would violate Section 17.108.080 of the Zoning Ordinance prior to establishment of the use or issuance of any building permits for the use. It is further his opinion that the first time the Board could take action would be at the permit issuing stage, at which time upon appeal of the issuance of the permit the Board may determine based on objective evidence that construction of the proposed buildings and the concomitant use thereof would create a violation of Section 17.108.080. Because a rural home industry has not been established on the property and building permits have not been issued for any buildings whose stated purpose is for use as a rural home industry, it is the Planning Director’s and County Counsel’s opinion that the Board does not have the statutory authority to provide relief to the appellant. Staff recommends that the Board of Supervisors deny the appeal and uphold the Planning Director’s determination.

It should be noted that through this appeal hearing and memorandum, the property owner is advised of the current existing County Code regulating rural home industries and if a use should be created on his property which in fact does violate Section 17.108.080 that the Board has the authority and obligation to require the property owner to abate the use.

Attachments

1. Notice of Appeal and supplemental information from appellants
2. Planning Director’s Determination regarding Zoning Request for Investigation
3. Rural Home Industry standards (Section 17.108.080 Zoning Ordinance)
4. County Counsel opinion

MARIPOSA COUNTY BOARD OF SUPERVISORS

MINUTE ORDER

TO: EDWARD JOHNSON, Planning and Building Director
FROM: MARGIE WILLIAMS, Clerk of the Board *mw*
SUBJECT: Public Hearing Re Appeal On APN 15-060-57;
Tom and Barbara DeVries, Et Al., Appellants
Resolution Number 94-199

THE BOARD OF SUPERVISORS OF MARIPOSA COUNTY, CALIFORNIA,

ADOPTED THIS Order on May 24, 1994

ACTION AND VOTE:

2:01 p.m. Edward Johnson, Planning and Building Director;

A) PUBLIC HEARING to Consider an Appeal of Planning Director's Action on APN 15-060-57 (Richard McGrath, Property Owner); Tom and Barbara DeVries, et al., Appellants
BOARD ACTION: Staff report was presented by Duane Hall/Associate Planner. Staff responded to questions from the Board relative to permit process and future changes in actual use of structure; whether there are limits to the size of storage structures; condition of the road; installation of three-phase electrical service; Rural Home Industry and the complaint process; definition of Rural Home Industry and Rural Home Enterprise, and appeal process when County Counsel has determined there is no remedy to the appeal. Public portion of the hearing was opened. Input was provided by: Tom DeVries/representing the appellants, stated this is a rural area with no industrial activity in the area; permit is for a 2400 square foot structure, with material at the site for a second Butler building; electrical power is installed for an industrial level of service; advised of statements allegedly made by the property owner relative to sound-proofing the structure for heavy equipment operation, plans to have an employee reside in the structure, and type of proposed woodworking business; stated the pad is more than one acre in size; and that this is a "defacto" application. Barbara DeVries/representing the appellants, presented information on the location of the subject property and input received from the other neighbors; expressed concern with the noise, traffic and "eye sore" impacts; questioned whether CEQA would apply if lamination construction took place; stated she feels the

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(05/24/94)
Edward Johnson
Planning & Building Director
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objective evidence could be used to show the intended use; requested a decision on proposed use prior to any actual construction; requested that there be no business conducted on the property until the property owner lives there, that there be no employees living in the building, there be no woodworking business which would require industrial saws and planers, and requested the Board look at the intended use and Rural Home Industry issue. Staff responded to questions from the Board concerning the nature of the easement to the property; whether a grading permit was issued for the pad; and whether any residences exist on the property. Persons speaking in support of the appeal: Martha Chernoff questioned County Counsel relative to the legal authority of a permit for this structure if the actual use is different from that stated in the application for a permit. Persons speaking in opposition to the appeal: Richard McGrath/property owner, stated his original intent was to build a garage so that he could build a house on the lower section and open a small business when he retired; he does not intend to have any employees; has tried to comply with all permitting processes; following the complaints, there will be no business in the building; the size of the structure is to accommodate restoration of antique cars; the size of the used building materials was purchased to allow for making a stronger building for the snow load; the driveway is wide because he had the facilities to do so. Mr. McGrath responded to questions from the Board relative to installation of three-phase electrical service - the cost was not much more than regular 200 amp service and is a more efficient power source; and originally he was going to reside in the structure while building a house, but is currently staying in a travel trailer. Tom DeVries offered rebuttal, advising that if Mr. McGrath is going to do what he stated during this hearing, they do not have a problem; but are still concerned with the appearance/objective evidence. Board commenced with deliberations. (M)Parker, (S)Balmain, Res. 94-199 adopted denying the appeal and upholding Planning's decision/Ayes: Unanimous. Hearing was closed.

cc: File