

ANTHONY LOMBARDO & ASSOCIATES
A PROFESSIONAL CORPORATION

Presented by staff
8/15/2016 Board Meeting
Item 9

ANTHONY L. LOMBARDO
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August 11, 2016

Jeanne Byrne, Chair
Members of the Board of Directors
Monterey Peninsula Water Management District
P.O. Box 85
Monterey, CA 93942-0085

RE: 150 Seafoam

Dear Chair Byrne and Members of the Board:

Our firm represents The Dale Hogan Family Trust who is the owner of a vacant parcel at 150 Seafoam and the adjacent home at 149 Spray Avenue.

The Trust purchased 149 Spray Avenue and the Seafoam lot from an estate after the previous owner passed away. The District has visited the property 3 times in the last 2 years and performed its inspections. Based on these inspections and retrofitting of the existing fixtures the Trust was able to generate an adequate number of water credits in order to construct a very modest home on the adjacent Seafoam lot.

As so often happens, neighbors who have become accustomed to looking over a vacant lot are opposed to the construction of any new home that would impact their existing views. This neighborhood is particularly well known for residents expressing those types of concerns.

The Hogans' project is no exception.

The appellants have contested my client's design approval for over a year. The construction documents were completed and submitted for the building permit prior to this appeal. John Kuehl, City of Monterey Building Inspector has issued a "hold" awaiting resolution of this hearing before the City will issue a building permit.

In this case, after the Monterey Peninsula Water Management District confirmed the available fixture credits, the property owners spent considerable sums having the home designed and obtaining the necessary approvals from the City. The application for the home was submitted in August 2015 and orange netting was erected on the lot as required by the City. After the netting was placed and prior to the initial Architectural Review hearing, one of the appellants, Mrs. Fields, added large picture windows facing the vacant lot in an area that had been a solid wall. Thereafter these windows became the basis of her complaint to the City about the impact on the view from the new windows.

Jeanne Byrne, Chair
Members of the Board of Directors
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What followed was the typical litany of objections from the appellants, including the attached letter of January 26, 2016 from Mrs. Fields objecting to the design and location of the home. She further suggested, along with Mr. Cusenza, that the home be lowered *6 feet into the ground* and variances be granted in order to push the home to the rear lot line to preserve her new view. (Exhibit A, attached hereto.)

The first Architectural Review Committee meeting for the City of Monterey was held on February 3rd and two of the appellants, Ms. Fields and Mr. Cusenza expressed the desire to have the City preserve their views and Ms. Fields, for the first time, said that when she purchased her home she believed that the vacant lot at 150 Seafoam could never be developed. (Exhibit B, attached hereto.)

At the conclusion of the February 3rd ARC meeting, the Board asked the designer David Prew to consider certain revisions to accommodate some of the appellants' concerns and return with a revised design for their consideration.

Mr. Prew returned on April 6th to the ARC to present revised plans based on the direction previously provided by the ARC.

All 3 appellants appeared and objected to the approval of the revised design. Mr. Cleaves complained about the fact that although he had a panoramic view of the ocean from his home, he was concerned the new home would block his view of the airport and hills.

After one of the ARC members questioned Mr. Cusenza about the basis for his belief that this legal lot of record would not be buildable, Mr. Cusenza said that a real estate agent and an appraiser told him it was not developable. An ARC member asked him if anyone from the City had ever made such a representation to him and he said no.

The ARC's comments, which are attached as Exhibit C, may explain why the appellants have been able to enlist the former real estate agent, appraiser and *trustee* in opposing the construction of this house. When ARC member Freeman made comments regarding her support for the design of the home and praised the efforts to satisfy the neighbors, she made a comment that she did not believe it was reasonable that the neighbors would expect that the lot would remain vacant and noted that if comments were made by the real estate agent, the trustee or the appraiser misrepresenting the status of the lot, that the appellants should consider litigation against those individuals rather than against the City.

The appellants continued to oppose the approval of the home, including when the final design of the home was considered by the ARC (Exhibit D, letter dated May 11th). The final design was then approved unanimously by the ARC.

Not satisfied with the ARC's decision, the neighbors appealed the approval to the City of Monterey Planning Commission (a copy of which is attached as Exhibit E), again complaining about the loss of views from their homes. The Monterey City Planning Commission denied the appeal unanimously, upholding the decision of the ARC to approve the project.

Jeanne Byrne, Chair
Members of the Board of Directors
August 11, 2016
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Having failed to convince the City of Monterey that the residential lot should either remain permanent open space or that the home should either be buried into the sand dune or shoved up against the rear of the lot to improve their views, the appellants have now challenged the District's determination that there are sufficient water credits available to build the home.

Not unsurprisingly, based on the comments made at the City of Monterey ARC, the individuals who the City suggested to the appellants were culpable for any misrepresentations regarding the ability to build on the lot, have now been enlisted by the appellants to say that they were not aware of the existence of the fixtures.

Ms. Fields attempted to purchase this property before my client purchased it. Her offer to purchase was rejected in favor of my client's offer. Possibly, Ms. Fields low offer was based on the representation from the trustee, appraiser and realtor that the vacant lot would never be built upon. In any event, if the appellants have any issue, it should be with the individuals who made that representation to them, not my clients.

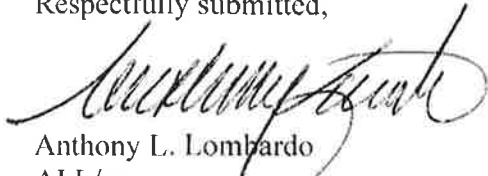
There is absolutely no conclusive documentation that I am aware of in either the listing information, transfer disclosures, appraisals or in photographs that indicates anything about the fixture units other than those documented by the District's inspections.

~~It has been my experience that, absent some type of irrefutable evidence (such as provided by a governing body) regarding the existing water fixtures, the District has always relied solely upon its own inspection report in determining the existence of fixtures and the availability of credits. I do not believe, in this case, that there is any evidence provided by the appellants that would justify the District deviating from that long standing practice.~~

Obviously, the issue of the appellants with this project has nothing to do with the water credits. It has to do with their attempts to ensure, as apparently represented by a real estate agent and appraiser that the lot will never be built upon.

On behalf of the Hogan Trust, I respectfully request that you deny the appeal and affirm the credits to allow the property owner to proceed with the construction of their home.

Respectfully submitted,



Anthony L. Lombardo
ALL/gp

Enclosures

cc: Client
Dave Prew

EXHIBIT A

ATTACHMENT 2

Architectural Review Committee
City of Monterey

RECEIVED

JAN 26 2016

Re: 150 Seafoam Ave; Permit 15-483

City of Monterey
PEEC DIVISION

We have heard from the owner that there were not a lot of places to put the proposed house on its lot, but ARC can give flexibility and has been given further authority to do so by the Planning Commission.

We would like to see the new house:

- Lowered,
- Centered or moved toward the north-east side of the lot (which has no neighbors), and/or
- Pulled back on the lot (toward its rear fence).

We propose these location modifications, and variances, in order to mitigate the negative impact on existing view and light corridors for 148 and 147 Seafoam Avenue and 145 Spray Avenue. Corridors which we just purchased our home at 145 Spray Avenue to enjoy! These modifications will also keep the new house in line with the way neighboring houses are situated on their lots.

Such considerations appear reasonable based on the fact that:

- The new house gains no view by staying at the proposed high elevation and loses no view by being moved to a lower, recessed location.
- The proposed design at its current elevation presents the image of a three-story house, which is out of place for the neighborhood.
- The ground level of this lot is higher today than when the lot was originally subdivided due to the activity of wind and sand over the years.
- The tall, straight side of the proposed house is crowding the south-west border of the property while the north-east is wide open
- Movement of the house on the lot provides mitigation of negative impacts while allowing the owner to maintain the current proposed building structure with no expensive design modifications.
- Overall, the placement of the house, with aggressive grading if necessary, is the best way to meet the needs of all involved parties.

We would encourage consideration of encroaching on the rear set-back and the north east set-back to best minimize the negative impacts of the new house on its existing neighbors.

The suggested mitigations are feasible:

- There is a strong precedence in our neighborhood of moving the naturally flexible sandy soil to meet the needs of surrounding neighbors. The houses at the end of Spray Avenue are a prime example. A few hours and a truck can make a huge difference.

EXHIBIT

A

ATTACHMENT 2

- All of the other houses in this area utilized retaining walls on their up-hill sides to achieve their desired lot locations; a five or six foot retaining wall (or wall built into the house structure) would not be out of place.
- The architect has mentioned that this placement preserves the views from 149 Spray Avenue (the owner's other house), but view *sharing* is the design guideline for the neighborhood and we are asking that the view be shared with others.

Taking away views while not gaining one is the reverse of what we try to achieve when considering new construction in the neighborhood. Lowering the house, and moving it back and to the north-east of the lot, are a small investment to make this new house a good fit. We invite you to not allow the building of the house at the maximum slope, and instead require it to be lowered and re-positioned.

Jayne and Jack Fields
145 Spray Avenue
Monterey, CA

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JAN 26 2016

City of Monterey
PEEC DIVISION

EXHIBIT B

Ms. Hopper said yes, however it would be difficult for some vehicles to access the garage at that slope.

Committee Member Latasa asked if the idea of locating a driveway off of Surf Way had been discussed and whether or not the site has water credits.

Ms. Hopper said water credits would be transferred to 150 Seafoam Avenue from 149 Spray Avenue.

Committee Member Freeman asked if the proposed setback could be moved further back on the lot.

Ms. Hopper said yes.

Committee Member Freeman asked if the proposed elevator required roof equipment.

Ms. Hopper said that was not a requirement for residential elevators.

Chair Kimzey asked if the Applicant would be required to replant the lot with native vegetation.

Ms. Hopper said that because the site is a natural dune, replanting it would be difficult and the Applicant would not be required to meet the recommended 85% revegetation.

Applicant

Dave Prew, designer of the project, said that his clients originally bought the house at 149 Spray Avenue which included the lot at 150 Seafoam Avenue. He said that the water fixtures were reduced at 149 Spray Avenue so they could transfer credits to 150 Seafoam Avenue. He said that he and his clients thought it would be best to create an eclectic design to complement the neighborhood and they would like it to be accessible for aging occupants. He said that is a goal to try to maintain the views of the neighbors as best as possible. He said that due to sand retention, pulling the home back on the lot would create a more expensive project. He said that they wanted to leave the land as natural as possible. He noted that sinking the structure by six feet would cause the garage to dip underground, making it impossible to use the driveway. He said that he intentionally worked to retain the neighbor, Marc Cosenza's, window view. He expressed concern that lowering the house seemed impractical, and that they had gone to great lengths to preserve views of the surrounding neighbors.

Committee Member Abma asked if lowering the house by four feet would cause severe design and functionality problems.

Mr. Prew said that he believed so.

Committee Member Theodore asked if the lot would be re-graded if the house was lowered by four feet.

Mr. Prew said that the site would be left intact with the topography remaining as is.

Committee Member Abma asked if the house was situated as far back on the lot as possible based on the rear yard setback.

Mr. Prew said yes, in order to preserve the neighbors' views.

Committee Member Freeman said that each one of the houses along the block is set back a certain distance back from each other one, but that his design appears to be forward of the others in line.

Mr. Prew said that if he moved the house back, he felt he would be moving it higher on the slope and thus impacting neighbors' views.

Public Comment

Mark Cosenza of 148 Seafoam Avenue said that as a neighbor of the homeowner of 149 Spray Avenue, he was under the impression that the lot could not be developed at 150 Seafoam Avenue until water was available. He expressed concern that the majority of the gradient was closer to his house, and noted that he felt if the house was moved back and toward Surf Way the gradient would be minimized.

Jamie Fields of 145 Spray Avenue said that she purchased her house specifically for the view and she did not believe that the lot at 150 Seafoam Avenue could be developed. She noted that many of the homes in the area have retaining walls and that it may be a consideration for the project at 150 Seafoam Avenue. She said that in the past, builders of homes had moved their structures to mitigate view impacts on neighboring homes. She said this project appears to be a three-story structure, while others in the area are two-story structures. She asked that the Applicant consider lowering the house six feet in consideration of neighbors' views.

Committee Member Comments

~~Committee Member Latasa asked if the house could be pushed further back on the lot.~~

Ms. Hopper said it could be pushed back to zero lot line; however that would not be ideal.

Committee Member Freeman expressed concern that moving the site toward Surf Way may not be a good idea.

Committee Member Latasa said that placing the driveway on the Surf Way side would involve redesigning the house.

Mr. Prew said that he could lower the overall height of the building two feet without interrupting the driveway or floor levels because the ceilings were currently proposed at nine feet.

Committee Member Latasa asked Mr. Cosenza if he felt that his view would be improved if the house was moved back on the lot.

Mr. Prew said that he was trying to be sensitive to Mr. Cosenza's privacy.

Mr. Cosenza said that he felt the house should be moved a bit towards Spray Avenue in order to mitigate the view impact.

Committee Member Freeman noted that many of the houses in this neighborhood have retaining walls.

Chair Kimzey asked if the natural terrain is sloping upward from the street.

Ms. Hopper said yes, that it slopes up from the corner about 16 feet.

EXHIBIT C

conjunction with the house at 149 Spray Avenue.

Committee Member Freeman asked if anyone from the City of Monterey told Mr. Cusenza that the lot was unbuildable.

Mr. Cusenza said no, but that he could obtain paperwork to show that the trust and the listing service said that the lot was unbuildable. He said that the trustee could also note that the property was not meant to be divided.

Applicant

Mr. Prew said that he was unaware of the details regarding the sale or value of the lot, but noted that if there was a vacant lot in the area, it would eventually be developed. He said that land is too precious on the Monterey Peninsula. He said that Mr. Cleaves' views were a concern to him, noting that he had tried to mitigate view impacts. He said that his clients should not be discriminated against for being the last ones on the block and that they deserved to have a nice living space and high-quality architecture. He said that he chose the 8.66% slope for the driveway because it was a center slope and although it was not perfect, it would make an accessible house with a good design.

Committee Member Comments

Committee Member Theodore asked for clarity on 145 Spray Avenue and the view impact that Ms. Fields was concerned with.

Ms. Fields explained the view and said that she planned to build a deck and an area with interior windows that would further allow a view of the bay. She said that looking east, not north, one can see the ocean over the rooftops on Surf Way.

Committee Member Latasa noted that the maximum height limit was 25 feet. He asked what the maximum height limit proposed for the house at 150 Seafoam Avenue was.

Ms. Hopper said that it was 24.8 feet. She also explained that at no point does the house incorporate a three-story element. She said that the house steps up the hill, so there was no portion above two stories.

Committee Member Freeman said that she believed that an architect's first duty was to satisfy the client and that Mr. Prew had gone to some length to satisfy both the neighborhood and his client. She said that she did not believe that the neighbors could expect to keep the lot vacant forever, and in an attempt to mitigate view impacts, it seems that Mr. Prew had done an outstanding job. She said that she felt the house design was superior, as well. She noted that Mr. Cusenza's point that the real estate agent's and trustee's misrepresentation of the lot's availability to be built upon was serious and any litigation should not be brought against the City but against those parties. She said that she supported the changes in design.

Chair Kimzey said that he believed the Applicant had followed the ARC's guidance and that he would support going forth with the storypole staking.

Committee Member Latasa said that he agreed with Chair Kimzey. He said that he felt the Applicant had heeded the ARC's requests for change in design. He noted that the nature of residential neighborhoods was for the lots to eventually fill in and said that he felt the Applicant had responded in a positive way.

Committee Member Abma said she believed that the Applicant responded in a positive

EXHIBIT D

May 11, 2016

City of Monterey Architectural Review Committee (ARC)

Mr. Charles Kimzey Chair

Re: 150 Seafoam Avenue, Monterey, CA 93940

Dear Mr. Kimzey,

I was standing on my deck this afternoon (which is across the street from 150 Sea Foam) and a construction crew started to adjust the poles indicating the height of the proposed house. I do not know at what height the poles and netting is set, but to me there is no change. I will lose about 95% of my mountains and airport views. I have attached a new picture of the new poles and netting. As you can see by the pictures, the proposed rental house is not consistent with the law/code of shared views. Again, Mr. Prew's statement that the proposed roof line will be the same height as the other roof lines is not true, just look at the pictures.

Again, I need to point out that this deck is the only place that can be used for outdoor functions such as bar-b-queing, entertainment of family / friends and / or just plain relaxing in the sun. I do have an outdoor table and 8 chair set-up on this deck along with a bar-b-que and outdoor cooking bar-b-que work station. The view of the surrounding hills and airport are very important to me and the market value of my property.

I have given Mr. Marc Cusenza and Mrs. Jayme Fields permission to speak for me at any meetings and site visits pertaining to 150 Seafoam as I will be out of town for the next few months. Both are allowed to take people on to my deck for the purpose of seeing the 95% mountain view and airport view that I will lose.

I stand by my letter/pictures of April 9, 2016 and request that the height of the proposed house be at least 8.5 feet lower than the original plans. If this is not acceptable to the owner, maybe this rental house design is not suited for this lot.

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MAY 12 2016
CITY OF MONTEREY
ARCHITECTURAL REVIEW COMMITTEE

EXHIBIT D

I would like this letter and pictures placed into the minutes/records at the next 150 Seafoam project discussion / agenda item so that the full ARC can see my concerns with the height of the proposed building and the loss of market value.

Thanks you for your understanding and your time in this matter.

Sincerely

Alan Cleaves
Homeowner
147 Seafoam Ave, Monterey, CA 93940

EC: Christy Hopper, Senior Planner

Mr. Cusenza

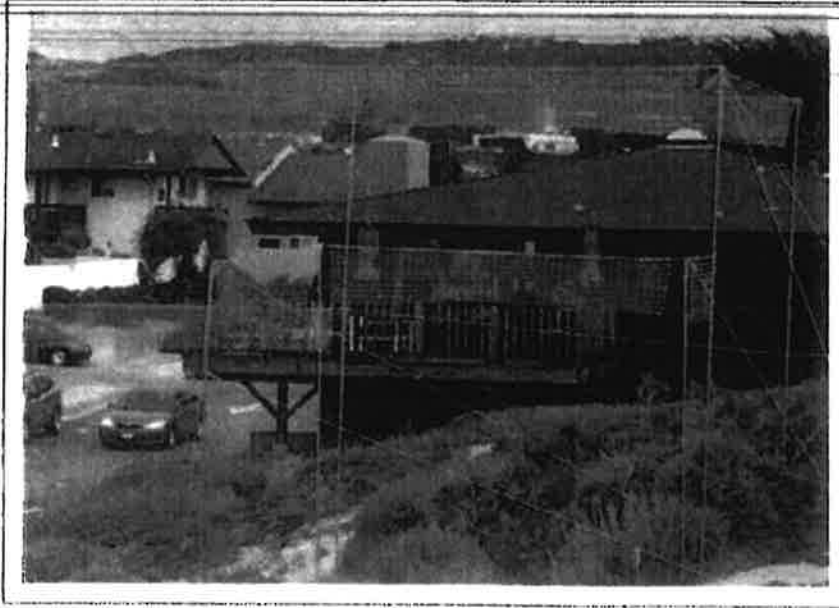
Mrs. Fields

Attachments:

A - Pictures



Copy of picture submitted with letter dated April 9, 2016 of anticipated lost view of Airport and Control tower



Picture taken after new poles and netting installed on May 11, 2016, confirming view loss of airport, control tower and most of the mountains.

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MAY 12 2016
PLANNING DIVISION

EXHIBIT E



PLANNING, ENGINEERING & ENVIRONMENTAL COMPLIANCE DIVISION

APPEAL TO: ARC _____ Planning Commission X City Council _____ FEE \$328

FROM ACTION OF: 150 Seafoam Avenue: Preliminary and Final Approval of AR Permit 15-293
DATE OF ACTION: June 1, 2016
APPELLANT'S NAME: Alan Cleaves, Marc Cusenza and Jayme Fields
MAILING ADDRESS: 147 and 148 Seafoam Avenue and 145 Spray Avenue
E-MAIL ADDRESS: eacleaves@msn.com, marccusenza@yahoo.com, jaymecfields@gmail.com
PHONE NUMBER: (831) 402-8877, (831) 751-5573
APPELLANT'S INTEREST: impact on view from 147 and 148 Seafoam Ave and 145 Spray Ave (Zoning Ordinance Section 38-206)

SUBJECT OF APPEAL: (To be completed by PEEC Staff only)
ORIGINAL APPLICATION NUMBER: 15-293
TYPE OF APPLICATION: Arch. Review
DESCRIPTION OF APPLICATION: New 2-story Residence
STREET ADDRESS OF SUBJECT PROPERTY: 150 Seafoam Avenue
Date Received: 6/13/2016
APPEAL NUMBER: P.110-258
Staff Initials: CH

APPELLANT'S REASON FOR APPEAL: Information not considered by the Architectural Review Committee could significantly improve the project outcome, acheiving a greater balancing of interests. See the attached for further details.

Appellant's Signature: [Signature] Date: 6/12/16

Reasons for appeal shall pertain to factual information considered by the last reviewing body. No new factual information may be submitted. You will receive a notice of the hearing date.

Reviewed by: [Signature] 6/13/2016 7/28/2016
45 Day Period from date of filing ends: 7/28/2016

EXHIBIT E

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JUN 13 2016

APPELLANT'S REASON FOR APPEAL:

City of Monterey

The neighbors have concerns over mass and view impacts from the proposed new structure. The neighbors feel that their rights under the Del Monte Beach land use guidelines were not given the weight that they should have been. Specifically:

- There was confusion over the neighbor's requests.
- The restaking was contrary to the neighbors' request.
- The majority of the committee did not attend the fieldtrip to see the restaking.
- Multiple options were not presented as requested.
- None of the neighbors' view concerns were addressed.
- There is uncertainty about availability of water for the project (from both Monterey Peninsula Water Management District and Cal Am).

Consultation with an architect has uncovered a simple solution which was not presented to, nor considered by, the Architectural Review Committee. The proposed compromise:

- Helps open the views
- Helps reduce the mass
- Corrects the negative impact on the neighbor of the previous design change

Despite the fact that multiple options were requested, only one option was presented to the Architectural Review Committee and it did nothing to address the view concerns that had been raised by the neighbors. Citing ADA access constraints, the option that was presented worsened the impact of the project. The appellants believe that the review process was not complete and that, after consultation with an architect, there is a solution that should be considered:

- Measuring the ADA compliant driveway slope at the downhill or east side of the driveway, using an ADA compliance path width, leaves room for the house to be lowered another 6 inches while maintaining ADA access via the driveway.
- Pulling the house back, or south, on the lot by six feet moves the side of the house out of the bay window view from 148 Seafoam and allows the house to be lowered another 6 inches.
- Dropping the ceiling in the garage to 7 feet 6 inches brings the ceiling more in line with the non-habitable laundry room and lowers the house height another 6 inches.

Based on the new calculations, the applicants are asking the Planning Commission to consider these changes. These simple changes undo the negative impact on 148 Seafoam of the applicant's proposed forward movement of the house, open up the view corridor to the bay for 145 Spray and give back some of the hillside view to 145 Seafoam.

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JUN 13 2016

The above solution is a compromise; more aggressive changes could be suggested that would further mitigate the negative impact. These include lowering the height of the first floor from 9 feet to 8 feet, lowering the garage another 6 inches to align it with the proposed lowered ceiling in the laundry room, moving the house east (toward Surf Way) into the 15 foot setback and/or significantly lowering the house by moving the driveway to the ADA accessible Surf Way. This last option is used by most houses on the street and would allow the theoretical occupant of this rental property to safely exit the driveway (which cannot happen in the proposed structure due to the slope of Seafoam).

In addition, the land use attorney raises the concern that the project is not likely to receive water. The Monterey Peninsula Water Management District recently stated that the proposed water source for this project was not in keeping with their policies. They have now issued Ordinance 170 to eliminate the residential water meter "loophole." Further, even if the District were to allow for the transfer of water credits, Cal AM is subject to its own regulations and installation of a new meter where none was present before would be a violation of its CDO.

As can be seen in the minutes, the Architectural Review Committee and City Planning staff were confused over the requests of the neighbors. Further, it does not appear that existing views were given the priority that they should have received per "City of Monterey Zoning Ordinance and Guidelines for Single Family Dwellings adopted in 1987". It is hoped that the results of this new analysis present a clear basis for compromise. This house takes away views without achieving any of its own. There is no equitable way to give value to one view over another; therefore in accordance with the Del Monte Beach Land Use Plan and Monterey Ordinance E, every effort must be made to find the middle ground. These proposed changes do so.