

The Planning Commission of the City of Fort Bragg met in regular session on the above date at 6:02 p.m., in the Fort Bragg Town Hall, 363 N. Main Street, Fort Bragg, and the following items were discussed in the order presented.

## **PLEDGE OF ALLEGIANCE**

### **ROLL CALL**

Present: Chair Don Snyder, Vice Chair Georgia Lucas, Commissioners Meg Courtney, and Mark Hannon.  
Absent: Commissioner Kathleen Johnson.  
Staff Present: Linda Ruffing, Community Development Director; Jason Dose, Planner III; and Nancy Philips, Administrative Secretary.

## **APPROVAL OF MINUTES**

Moved by Courtney, seconded by Hannon, to approve the October 12, 2005, minutes as written.

VOTE: Ayes: Commissioners Courtney, Hannon, Lucas, and Chair Snyder.

Absent: Commissioner Johnson.

## **PUBLIC COMMENTS ON NON-AGENDA ITEMS**

None.

## **PUBLIC HEARINGS**

1. **LLA 2-03 and VAR 2-03; Gayanne and Scott Alexander (applicants); Merchants Finance Corporation (owner); Ed McKinley (agent); 1405 Cedar Street; APN 020-470-20/21; Lot Line Adjustment to transfer 15' by 222' from parcel 2 (APN 020-470-20) to parcel 1 (APN 020-470-21). The remaining 15' of parcel 2 would be dedicated to the City of Fort Bragg for street improvements on Rasmussen Lane. Variance is requested to reduce the street side (west) setback from the required minimum of 10' to a minimum of 5' to provide a larger building envelope on the parcel. The building envelope is established due to the presence of wetlands and a rare plant on a majority of the property. (NOTE: This item was continued from September 14, 2005.)**

Director Ruffing stated that the application was previously heard by the Commission on September 14. The public hearing was opened and a number of issues were reviewed relative to the variance, wetlands and rare plant habitat. The public hearing was closed, and the Commission directed staff to prepare findings supporting denial of the application. Subsequent to that meeting, the applicant's agent requested that he be given additional time to present information to the Commission as his presentation was cut short due to time limits imposed on all speakers. To accommodate this request, the Commission directed that the public hearing be renoticed. This evening's meeting was scheduled to reopen the public hearing to obtain additional testimony from the applicant and their representative. Other members of the public may speak as well. She noted that the original staff report recommended denial of VAR 2-03 and approval of LLA 2-03 and provided findings and special conditions to support that action. A memorandum distributed at the last meeting provided findings supporting denial of the entire application. Three letters have been received pertaining to this application since the last public hearing. One is from Jim Jackson, an attorney representing the Alexanders. The second is from Nathan Botwanick, who bills himself as "the Wetland Guy," regarding the potential use of the property as a wetland mitigation site. The third letter was received this afternoon from Bill Van Doren, a neighbor who opposes the application. Snyder noted that it is hard for the Commission to digest letters handed out at the meeting and suggested that future correspondence be given to the Community Development

Department by the Friday preceding the public hearing.

**Chair Snyder opened the public hearing at 6:12 p.m., noting that there would be no time constraints imposed, but that presentations should be succinct.**

1. Ed McKinley, representing the applicant, stated that one of the concerns noted in the Jackson letter was that at the September 14 meeting the Commission did not spend much time deliberating the staff report and issues. Staff has worked on this project for 2½ years. Public agencies had input and supported the application. For the Commission to determine that there is no building envelope because 90% of the property is off limits for development could devalue the property and be considered a taking. He stated that staff determined that there is a workable building envelope and that he has handled many permits in the County and to his knowledge there has never been a project rejected because of an Environmentally Safe Habitat Area (ESHA) buffer. There is always a way to mitigate around it. He referred to maps that show the boundaries of the building envelope and wetland and rare plant areas. The wetland is required to be fenced off. If the variance is denied, there would be no backyard. He distributed a table of assessor's office descriptions of neighboring properties. The average house size in the neighborhood is 1,715 square feet. With a garage, outbuildings and structures the average total is 2,316 square feet. This supports one of the findings for a variance because the structures on the property would be limited to 1,692 square feet and would not enjoy the same privileges as neighboring properties. Without the variance a two-car garage would result in an awkward floor plan. The Corps of Engineers defined the wetland and what is left is a building envelope. The property owners have a right to build a house. Saying that the building envelope is a wetland over and over again does not make it so. Hydrophytic vegetation can grow outside a wetland because the plants have long roots that can reach water. The letter from Nathan Botnowick is clearly not written by a wetland scientist or firm. It is written by a realtor who got into the business of locating mitigation banks. After the last public hearing, the Commission requested staff to come up with findings for denial. Staff had only two weeks to write them. A lot more effort should go into findings for denial. The findings for approval took 2½ years.
2. Bill Van Doren, neighbor, stated that his initial assumption was that the house to be built on the property was to be the Alexander's residence; however, they are living in a new house and do not intend to move there. There are few other properties in Fort Bragg with so many contingencies and lot limitations. The neighbors have built larger homes because they are not on a wetland. The argument that the buildable space is not a wetland is kind of silly because it was filled a few years ago. Nature knows where it is a wetland. If you were to remove a couple of inches of soil, it would still be a wetland. If a house is built on the wetland, there is a liability for dampness and unwanted water. This was all ignored by professionals hired by the applicant. It is an old game of hiring people to make a case for you, but it does not change the underlying reality of the issue. It is a poor building site that does not make a lot of sense as the house would be very limited to an awkward position with extraordinary liabilities. The Alexanders are now heavily invested in this and want to see it through. It is too bad that they made a poor investment, but it is not the Commission's job to bail them out. Since the Alexanders will not be living there, it will have to be sold to someone. Who will want to buy it with so many liabilities? It would be someone without sophistication or money. Sooner or later something will go wrong, and those people will not be able to meet their obligations. Do not discount the strong claim that there is value in the property as a wetlands mitigation site. It has certain value as an open space. It is not an asset in the community to build on that site.
3. Robert Van Peer stated that the Commission should not allow anyone to build upon a wetland. That said, it is clear that the applicant is not asking to build on a wetland. There is a defined building envelope, and they asked for a variance. You can keep calling it a wetland over and over again, but the Corps of Engineers has defined the wetland boundaries. It does not matter who is developing it or what they will do. It is not an issue whether the project makes sense financially. No one is asking to build on a wetland or for the City to guarantee that the Alexanders make their

money back. The Commission should look at its guidelines and approve the project.

4. Ed McKinley addressed the Commission to respond to points raised, stating that no one has expressed an interest in buying the parcel for open space. He called the Mendocino Land Trust, and they were not interested. It disturbed him to hear the opinion that there was an "old game" that they find consultants to write reports that they need. They used Wetlands Research because they report the facts, whether or not they benefit the property owners. To suggest that the developer is a bad guy is not fair. The Alexanders could do anything with the property - build or sell. It should not be an issue. The Botwanick letter tries to make a value of the property as a land bank, but he did not address the issues in the Wetlands Research report. There is no evidence that there was fill, though there probably was – perhaps during the subdivision. The photo of the property submitted by Van Doren at the last meeting looks the same as the property does today. Environmental laws have changed in the last ten years. The Corps of Engineers will not get into this because there is too much of a gray area as to when the property may have been filled and the prevailing laws at that time. The County approves permits all the time in the neighborhood of a wetland. They have a 100' setback policy and allow some flexibility to 50'. They allow development within the 50' buffer when there is no alternative.

**Chair Snyder closed the public hearing at 7:06 p.m.**

Discussion:

5. In response to a question from Lucas, Director Ruffing stated that there is a condition in the permit that requires ongoing monitoring and reporting to the City, the Department of Fish & Game, and the Water Board. The City would require that the applicant establish a developer deposit account to cover costs incurred for the mitigation monitoring. The applicant would need to contract with a biologist to prepare the report and potentially develop additional mitigations in an iterative process if the monitoring indicates that wetland is not being adequately protected by other measures. The special conditions pertaining to the wetland would be recorded on the deed to continue in perpetuity. If the property owner did not comply, the City could enforce the conditions through the courts. The resource agencies indicated that the wetland could be protected through setbacks and other mitigations, but that a monitoring program was needed. She stated that, if the mitigation program is unsuccessful, enforcing new conditions to protect the wetland could be a potential problem. In response to a question from Snyder, Ruffing added that prior to development on the site, the applicant would be required to obtain permits, or written confirmation that the project is not subject to the permitting requirements, from the Corps of Engineers, Regional Water Quality Control Board, and the Department of Fish & Game.

Discussion:

6. Snyder said that he felt that this project is so close to the edge relative to the protection of the wetlands that even the consultants who recommend it prescribed review for five consecutive years. He doubts that future mitigations would include taking the house away if it did not work out. He feels that this project involves shoe-horning an unnatural plan into the wrong spot.
7. Hannon stated that he does not support denial of the application and believes the Commission should return to the original staff recommendation. He noted that the Commission would be mistaken if it thought that the applicants are through with the monitoring of rare plants or wetlands. After receiving this permit, they would only be starting a lengthy review process with the other permitting agencies.
8. Lucas said that the Land Use & Development Code (LUDC) and the General Plan establish that there should be no net loss of wetlands. She said that there is a building site for a modest home, but in the process of building it, she does not believe that there would not be a net loss of wetland. We have to be careful about not setting a precedent that would allow loss of wetlands. She believes that this project skirts too closely to something the General Plan is pretty specific about.
9. Courtney stated that she understands that her duty is to uphold zoning laws. Van Peer's point is

well taken, but her gut feeling is that this is not a good idea. It took 2½ years for agencies to figure out how to get the project shoe-horned in. It was never thought of as a good idea by the City or agencies.

**Moved by Hannon to adopt original staff recommendation and findings to support denial of VAR 2-03 and approval of LLA 2-03.  
*MOTION FAILED DUE TO LACK OF SECOND.***

**Moved by Courtney, seconded by Lucas, to deny LLA 2-03 and VAR 2-03 based on the following findings:**

#### **FINDINGS**

- 1. The project site is comprised primarily of environmentally sensitive habitat with a relatively small upland area adjacent to Rasmussen Lane that is identified as a building envelope through the lot line adjustment application.**
- 2. Nearly three-quarters of the project site is a jurisdictional wetland and there is a large population of deceiving sedge (*Carex saliniformis*), a rare or endangered plant, located on the property.**
- 3. The proposed development of a residence on the building envelope that is proposed on Parcel 1 could potentially damage the resource values of the wetlands and the rare plant habitat through vegetation removal, erosion and sedimentation, compaction, excavation and fill.**
- 4. The proposed development of a residence on the building envelope that is proposed on Parcel 1 could have potential long-term impacts on the wetlands and rare plant habitat through increased human activity, presence of domestic animals, and the potential discharge of fertilizers, herbicides and pesticides, sediments, etc. into the wetland and rare plant areas, potential introduction of non-native plant and animal species.**
- 5. The proposed development of a residence on the building envelope that is proposed on Parcel 1 has the potential to negatively impact the habitat value of the adjoining wetlands and rare plant habitat through potential long-term changes in site hydrology and drainage patterns due to excavations, foundations, and run-off from impervious surfaces associated with site development.**
- 6. The project-specific evaluations and the buffer zone analysis do not conclusively demonstrate that the project can be conditioned to protect the resource value of the sensitive habitat on the site. The requirement for annual monitoring and, if necessary, establishment of additional future mitigations to protect the habitat after construction of a residence, does not ensure the long-term protection of the wetlands and rare plant habitat.**
- 7. The proposed application is not consistent with the City of Fort Bragg General Plan policies pertaining to the protection of environmentally sensitive habitat.**

**VOTE: Ayes: Commissioners Courtney, Lucas, and Chair Snyder.  
Noes: Commissioner Hannon.  
Absent: Commissioner Johnson.**

Lucas noted that she would like to submit a letter reflecting the reasons for her decision. Director Ruffing said that such a letter could be put in the project file and become part of the official record, but it would not be reflected in the minutes for the meeting. Should the decision be appealed, correspondence received subsequent to the decision would be included. Lucas said that she just wanted to clarify that her decision was based on the LUDC & General Plan requirements and her belief

that the project would not protect the wetlands and rare plant habitat on the site.

## **CONDUCT OF BUSINESS**

### **2. Matters from Chair/Commission/Staff**

- A. Director Ruffing reported that 190 people participated in the Mill Site Specific Plan community meeting and Mill Site bus tour. She invited the Commission and the public to participate in a community meeting and panel discussion at Town Hall, 7:00 p.m., November 4 for the Marine Science Institute Feasibility Study. A panel of seven or eight experts will be coming to Fort Bragg for a couple of days next week to intensively study and consider the prospects of developing a Marine Science Institute on the Mill Site. The panel has worked together for the last ten years setting up marine labs and biological stations across the country. The City received two Community Development Block Grants to fund the initial phase and strategic plan.

## **ADJOURNMENT**

**Chair Snyder adjourned the meeting at 7:23 p.m.**