

**MINOR SUBDIVISION COMMITTEE  
COUNTY OF MONTEREY, STATE OF CALIFORNIA**

RESOLUTION NO. 04016

MINOR SUBDIVISION # 030457

A.P. # 139-291-005-000

In the matter of the application of  
**Edward & Jane Ramirez (PLN030457)**

**FINDINGS & DECISION**

for a Use Permit in accordance with Title 21 (Zoning) Chapter 21.74 (Use Permits) of the Monterey County Code, consisting of 1) a Map Amendment to change and enlarge the recorded building envelope on Lot 5 of the Riverview Heights (Violini) Subdivision, Tract 1144; 2) a Use Permit for development in a VS (Visually Sensitive) Zoning District to construct a 7,353 square foot two-story single family residence with attached three car garage; 3) a Use Permit for removal of two protected heritage oak trees ( 32" and 20" diameters); 4) a Variance request to exceed the 20' height limit by 7' 4" (height 27' 4" from average natural grade), and Grading of 800 cu. yds. (400 cu. yds. of cut; 400 cu. yds. of fill). The project is located at 21440 Riverview Court, Salinas, within the Las Palmas Ranch Development off River Road in the Toro area, came on regularly for hearing before the Minor Subdivision Committee on August 12, 2004.

Said Minor Subdivision Committee Administrator, having considered the application and the evidence presented relating thereto,

**FINDINGS OF FACT**

**1. FINDING:** The project proposed in this application consists of (1) a Map Amendment to the building envelope and scenic easement on Lot 5 of the Riverview Heights subdivision map as found in Volume 17, Cities and Town Map, Page 25 (approved by Planning Commission Resolution 90-165, file #PC07368, Violini Las Palmas Ranch Development); (2) a Variance for exceeding the height limits for structures in the area; and (3) a Use Permit for removing 2 oak trees and for 800 cubic yards of grading (400 cubic yards of cut and 400 cubic yards of fill. The amendment conforms to the plans, policies, requirements, and standards of the Monterey County Subdivision Ordinance (Title 19), the General Plan, the Zoning Ordinance (Title 21), and the Toro Area Plan. The property is located at 21440 Riverview Court, Salinas (Assessors Parcel Number 139-291-005), within the Las Palmas Ranch development off River Road in the Toro Area.

**EVIDENCE:** The Planning and Building Inspection staff reviewed the project, as contained in the application and accompanying materials, for conformity with:

- a) The Monterey County General Plan (Policy 27.3.2).
- b) The Toro Area Plan (Policies 3.2.4; 7.2.3; 26.1.6; 26.1.20.1).
- c) Subdivision Ordinance (Section 19.01.025 1.; 19.01.055 A and B; 19.01.075 A.; and 19.08.015 7).

**EVIDENCE:** The proposed development has been reviewed by the Monterey County Planning and Building Inspection Department, Water Resources Agency, Public Works Department, Environmental Health Division, Parks and Recreation Department, and the Salinas Rural Fire Protection District. The respective departments have recommended conditions, where appropriate, to ensure that the project will not have an adverse effect on the health, safety, and welfare of persons either residing or working in the neighborhood; or the county in general.

**EVIDENCE:** Written and verbal public testimony submitted at public hearings before the Minor Subdivision Committee on August 12, 2004.

**EVIDENCE:** The application, plans, and support materials submitted by the project applicant to the Monterey County Planning and Building Inspection Department for the proposed development, found in project file #PLN030457.

***FINDING FOR REMOVAL OF TWO OAKS, ONE OF LANDMARK STATUS:***

2. **FINDING:** The removal of two coastal live oaks is based on Section 21.64.260 D. 5. c.: “The tree is diseased, injured, in danger of falling too close to existing or proposed structures, creates unsafe vision clearance, or is likely to promote the spread of insects of disease.”

**EVIDENCE:** Garry Tarnowski, certified arborist (Certified Arborist Report dated August 10, 2001), identifies the 32” coastal live oak within the proposed building envelope as follows: “Many leaders are damaged due to tear outs and show signs of dry rot. Crown is one sided, leaning down slope. Multiple trunk hollowing at first and second whorls. There are beetle holes and no signs of frass. Recommend removal.”

Mr. Tarnowski identifies the 20” coastal live oak outside of the proposed building envelope but within the proposed driveway access as follows:

“Tree has dry rot hollowing near the root crown and is structurally unsound. There are beetle holes and no signs of frass. Recommend removal.”

Given the above recommendations for removal of the two trees based on tree disease and structural instability in close proximity to a proposed structure, the trees shall be removed by approval of the Monterey County Planning Commission. Replacement of the two oaks at a size and location recommended by a County certified forester or arborist to further enhance the oak woodland and guarantee substantial screening of the proposed structure from the public viewshed shall be required pursuant to Sections 21.64.260 D.4. Of the Monterey County Zoning Ordinance, Title 21.

***FINDING FOR DEVELOPMENT IN A VISUAL SENSITIVITY ZONING DISTRICT:***

3. **FINDING:** The proposed single family dwelling, as approved and conditioned, will not create a significant adverse visual impact from a common public viewing area in a Visual Sensitivity (“VS”) zoning district.

**EVIDENCE:** The originally proposed structure was at 34 feet 6 inches from average natural grade, which, because of the 19% slope drop, presented a 38-foot elevation at the down slope facing northeast toward the public viewshed as seen from River Road and Riverview Court. At this height, the roof ridge was exposed above the intervening oak grove and in the public viewshed.

During the review process, the applicant agreed to reduce the height to 27 feet 4 inches from average natural grade, or a reduction of 7 feet 2 inches. At the northeast down slope elevations, the elevation has been reduced from 38 feet to 30 feet, which places the structure at the height of the intervening oak grove and thereby screened from the public viewshed.

**EVIDENCE:** A condition has been placed on the project that height verification be measured by an onsite benchmark as certified by a licensed civil engineer or surveyor.

***FINDINGS FOR AN AMENDMENT TO THE BUILDING ENVELOPE AND SCENIC EASEMENT:***

**4. FINDING:** The enlargement of the building envelope serves to orient the length of the building more on an east west, rather than a north-south axis to allow greater southern exposure of the structure by 20 feet at the southern elevation. (The proposed enlargement of the building envelope is not related to the height issue because it does not change the 19% slope found at the designated building envelope).

**EVIDENCE:** The enlarged building envelope expands the existing building envelope by approximately 2,900 square feet to the north and east, adding approximately 35 feet to the east-west axis within which the proposed residence will have approximately 100 feet of southern exposure.

**EVIDENCE:** The enlarged building envelope with the removal of the two oaks allows a shorter, more direct, level driveway access to the garage from the Riverview Court cul-de-sac, thereby reducing the amount of grading required.

**5. FINDING:** The enlarged building envelope will encroach upon the surrounding scenic easement placed on the project over slopes from 10% to 30%, Scenic Easement “B.” It does not encroach upon Scenic Easement “A” at the site with slopes greater than 30%. The reconfigured Scenic Easement “B” will continue to protect the oak grove at the site that is within the public viewshed and that serves to screen the building envelope. Two diseased oaks to be removed with two replacement oaks and the encroachment of driveway access to the proposed residence are the proposed “material alterations” of the scenic easement in addition to reconfiguring the easement boundaries to accommodate the enlarged building envelope.

**EVIDENCE:** The application, plans, and support materials submitted by the project applicant to the Monterey County Planning and Building Inspection Department for the proposed development and the materials found in the originally approved subdivision file, found in project files PC07368 (Violini Las Palmas Ranch Subdivision) and PLN030457 (Ramirez).

**EVIDENCE:** The designated building envelope and scenic easements on the Ramirez property, found in Volume 17, Cities and Town Map, Page 25, at Lot 5 of the Official Records of the Monterey County Recorders Office.

***FINDINGS FOR A VARIANCE TO THE REQUIRED 20’ HEIGHT LIMIT AT THE SITE:***

**6. FINDING:** That because of special circumstances applicable to subject property, including size, shape, topography, location or surroundings, the strict application of this Title is found to deprive subject property of privileges enjoyed by other properties in the vicinity and under identical zone classification.

**EVIDENCE:** The proposed height of the structure at 27 feet 4 inches from natural grade exceeds the required height of 20 feet in this Visual Sensitivity zoning district. The applicant is

seeking a Variance from the Monterey County Planning Commission to exceed the 20 foot height designation based on the topography at the site and the existing oak grove that will screen the proposed structure at the increased height when viewed from Riverview Court and River Road.

**EVIDENCE:** The building envelope has a 19 % down slope that best requires a split-level residence to minimize grading. This provides a northern and eastern elevation of 30 feet and a western elevation of 22 feet 5 inches at the highest-most roofline, with a 27 foot 4 inch height from average natural grade. To accommodate the proposed residence that has already been reduced 7 feet 2 inches to be screened by the existing oak grove, would require further grading cuts into the slope.

**EVIDENCE:** The residence is a custom-designed and built home without the flat, graded building sites on smaller lots found within the neighboring Las Palmas Ranch subdivision. The applicant cannot therefore be strictly judged by the neighboring tract homes when accommodating the best use of a larger (2.342-acre lot) property situated in the foothills of the Sierra de Salinas mountain range, above the tract homes.

**EVIDENCE:** Planning Commission Resolution 90-165 (file #PC07368, Violini Las Palmas Ranch Development) showing the original designated building envelope and scenic easements on Lot No. 5, found in Volume 17, Cities and Town Map, Page 25, of the Official Records of the Monterey County Records Office. Compare with the proposal to adjust the building envelope and scenic easement for Lot No. 5, found in file no. PLN030457.

7. **FINDING:** That the variance does not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and zone in which such property is situated.

**EVIDENCE:** The residence is a custom-designed and built home without the flat, graded building sites on smaller lots found within the neighboring Las Palmas Ranch subdivision. The applicant cannot therefore be strictly judged by the neighboring tract homes when accommodating the best use of a larger (2.342-acre lot) property situated in the foothills of the Sierra de Salinas mountain range, above the tract homes.

**EVIDENCE:** The primary evaluation of the height of the house is placed in the context of the “Visual Sensitivity” zoning overlay placed on the property measured by the potential visibility of the structure within the public viewshed as seen from Riverview Court and River Road. During the review process, the applicant agreed to reduce the height to 27 feet 4 inches from average natural grade, or a reduction of 7 feet 2 inches. At the northeast down slope elevations, the elevation has been reduced from 38 feet to 30 feet, which places the roofline at the height of the intervening oak grove that serves to screen the structure as viewed from the nearest public roads.

**EVIDENCE:** A condition has been placed on the project that height verification be measured by an onsite benchmark as certified by a licensed civil engineer or surveyor.

8. **FINDING:** A Variance shall not be granted for a use or activity that is not otherwise expressly authorized by the zone regulation governing the parcel of property.

**EVIDENCE:** The project is zoned for Low Density Residential Use allowing no further subdivision of the property (LDR/B-6-VS-20’). The proposed single-family dwelling is an allowed use under the zoning regulations for the site. The applicant is going through approved procedures pursuant to Chapter 21.72 of the Monterey County Zoning Ordinance for a

grant of variance to the 20 foot height limit at the site. Also, the applicant is going through approved procedures for the request for a Map Amendment, pursuant to Section 19.08.015 of the Subdivision Ordinance, Title 19.

***FINDING FOR MAP AMENDMENT:***

**9. FINDING:** After a Final or Parcel Map is filed in the Office of the County Recorder, it may be amended by a certificate of correction or an amending map pursuant to Section 19.08.015 of the Subdivision Ordinance, Title 19.

**EVIDENCE:** The applicant has requested to amend the Riverview Heights Final Map found in Volume 17, Cities and Town Map, Page 25, of the Official Records of the Monterey County Recorders Office to adjust the building envelope and scenic easement for Lot No. 5.

**EVIDENCE:** The adjustment of the building envelope will avoid the oak tree grove that serves to screen the development from Riverview Court and River Road.

**EVIDENCE:** The building envelope will allow for a greater east-west residential orientation for greater southern exposure and energy efficiency.

**EVIDENCE:** The resulting building envelope boundary does involve the removal of two diseased oak trees with 32” and 20” diameters, but provides a shorter and more direct driveway access from the Riverview cul-de-sac.

**EVIDENCE:** Approval of the proposed amendment (adjusted building envelope and scenic easement) will not, “alter any right, title or interest in the real property reflected on the recorded map,” as the property owner will have the right to build and maintains title and interest in the property.

**EVIDENCE:** Approval of the proposed amendment (adjusted building envelope for Lot 5) will not, “alter any right, title or interest in the real property reflected on the recorded map,” of neighboring property owners as no changes or adjustments to other parcels are being considered or made. All rights and interests in adjacent single-family properties will be unaffected by the proposed amendment.

***FINDING FOR SITE SUITABILITY:***

**10. FINDING:** The site is suitable for the use proposed.

**EVIDENCE:** There has been no testimony received either written or oral, during the course of public hearings to indicate that the site is not suitable for the project. Necessary public facilities are available for the use proposed. The project has been reviewed by the Monterey County Planning and Building Inspection Department, Water Resources Agency, Public Works Department and Health Department. There has been no indication from those agencies that the site is not suitable. There are no physical or environmental constraints such as geologic or seismic hazard areas, environmentally sensitive habitats, or similar areas that would indicate the site is not suitable for the use proposed.

***FINDING FOR SEWAGE DISPOSAL AND WATER SUPPLY FACILITIES:***

**11. FINDING:** That adequate sewage disposal and water supply facilities exist or are readily available, to be shown by “can and will serve” letters from CAL-AM and to be approved by the Director of Environmental Health.

**EVIDENCE:** Materials in project file.

***FINDING FOR CEQA EXEMPTION:***

**12. FINDING:** The project is Categorically Exempt under the California Environmental Quality Act (CEQA).

**EVIDENCE:** Section 15303 (a) of the California Environmental Quality Act exempts a single-family residence in a residential zone.

***FINDING FOR PUBLIC NOTICING:***

**13. FINDING:** Public notice of the pending Combined Development Permit was provided pursuant to Section 21.78.040, Title 21, Monterey County Zoning Code.

**EVIDENCE:** Materials in project file.

***FINDING FOR OPPURTUNITY TO APPEAL PROJECT:***

**14. FINDING:** The project as described as an enlargement of the building envelope and amendment of the existing scenic easement at the site is appealable to the Planning Commission. The Planning Commission shall be conducting a separate hearing on the Variance request for exceeding the height limit at the site for the proposed residence.

**EVIDENCE:** Section 19.16.020. B of the Monterey County Subdivision Ordinance (Title 19).

**EVIDENCE:** Section 21.46.030. D of the Monterey County Zoning Ordinance (Title 21).

**DECISION**

THEREFORE, it is the decision of said Minor Subdivision Committee that said application be approved recommending to the Planning Commission to approve the enlargement of the building envelope and amend the scenic easement, consider the variance for exceeding the zoned height limits, consider the proposed oak tree removal based on the Findings and Evidence and proposed Conditions of Approval as shown on the attached sketch, and subject to the attached conditions.

**PASSED AND ADOPTED** this 12th day of August 2004.

---

LYNNE MOUNDAY  
Acting Secretary

COPY OF THIS DECISION WAS MAILED TO THE APPLICANT ON