

County of Santa Clara
Department of Planning and Development

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FIRE MARSHAL'S OFFICE – FIRE SAFE EXCEPTION APPEAL DECISION

Application: PLN 15-10815
Appellants: Margaret Belska and Peter Manca
Hearing Date: October 28, 2021

Hearing Officer: Hector Estrada
Phone #: (408) 299-5760
E-Mail: hector.estrada@sccfd.org

December 9, 2021

Ms. Belska and Mr. Manca,

This letter is to inform you of the determination on your appeal, filed with the County of Santa Clara on May 13, 2021, of CalFire's April 29, 2021 denial of your request for an exception from provisions of the "Fire Safe Regulations" (14 Cal. Code Regs. §§ 1270 *et seq.*) with regard to Application PLN 15-10815 ("Application"), seeking to construct a single family home on Assessor's Parcel No.: 645-15-028, commonly known as 0 Higuera Highland Lane ("Subject Property").

I. Findings

Based on the evidence, both oral and documentary, having been introduced, and the matters having been submitted for decision and findings at the hearings on October 28, 2021 and December 7, 2021, I have made the following findings of fact and conclusions of law:

A. The Fire Safe Regulations Apply to the Application.

Parcels created by a parcel or tentative maps or other developments approved before January 1, 1991 are exempt from compliance with the Fire Safe Regulations with respect to conditions relating to the perimeters and access to the buildings imposed by that map. (Pub. Res. Code § 4290(a); 14 Cal. Code Regs. 1270.02(b); 76 Ops. Cal. Atty. Gen. 19, (1993).) The Subject Property was created on October 15, 1980 by a parcel map of the lands of John Richards IV *et ux.* & Richards Childrens Trust. (Applicant's Presentation, p.16 (see Parcel 1).) This map does not impose any conditions relating to perimeters or access to buildings on the Subject Property. Furthermore, there is no evidence of any subsequent maps approved prior to January 1, 1991 imposed any conditions relating to perimeters or access to buildings on the Subject Property. As the Subject Property was not created by a parcel map prior to January 1, 1991 that imposed conditions relating to perimeters or access to buildings, this Application is subject to the Fire Safe Regulations.

B. The Application Does Not Provide the Same Practical Effect Towards Providing Defensible Space as Compliance with the Fire Safe Regulations.

Applications for an exception to the Fire Safe Regulations must provide the same practical effect as the Fire Safe Regulations towards providing defensible space. (14 Cal. Code Regs. § 1270.06(b).) In other words, an application seeking an exception from compliance with a particular provision of the Fire Safe Regulations must provide an alternative means of achieving the same purpose that the provision seeks to

accomplish. “Same practical effect” means an alternative with the capability of applying accepted wildland fire suppression strategies and tactics and provision for firefighter safety, including access for emergency wildland fire equipment and safe civilian evacuation. (See 14 Cal. Code Regs. § 1271.00.) “Defensible space” must incorporate basic wildland fire protection practices and measures for escaping structure fires and encroaching wildfires. Wildland fires refer to fires in the environment rather than in structures. While best practices for defending structure fires focus on the defensibility of the structure and the surrounding area, best practices in wildland fire protection focus on ensuring that all civilians are able to escape to centralized defensible locations, allowing firefighters to more effectively deploy limited resources.

1. The Proposed Mitigation Measures Do Not Provide the Same Practical Effect Toward Providing Defensible Space as Having Multiple Means of Egress.

The Fire Safe Regulations require that the maximum length of a dead-end road may not exceed 2,640 feet for parcels zoned for 5-19.99 acres (14 Cal. Code Regs. § 1273.08(a).) The Subject Property is 18.8 acres in size and is near the end of Higuera Highland Lane, an approximately 10,000 foot dead end road. The purpose of this regulation with respect to this project is to allow residents of the property multiple means of egress in the event of a fire. Multiple means of egress is an essential element of defensible safe because it prevents an incident that obstructs access along the primary egress route from trapping civilians and firefighters. An alternative that provides the same practical effect must either provide an alternative means to escape or mitigate the need to escape the property. The longer the distance the higher the risk that a person will not be able to evacuate. This Application is proposing to build nearly four times the maximum allowable length down the dead end road at issue, which presents a significant risk in the event of a wildland fire.

None of the proposed improvements included in the Application, including the proposed fire protection water supplies, wharf hydrants, fire truck turnarounds, and road improvements, provide the same practical effect toward providing defensible space as having multiple means of egress. While fire truck turnarounds and road improvements would allow for better egress along the primary road, they would not allow for egress if the primary road is blocked. Similarly, increased water supply and hydrants could allow firefighters to defend against a fire longer, this does not have the same practical effect as being able to escape the property.

2. The Proposed Mitigation Measures Do Not Provide the Same Practical Effect Toward Providing Defensible Space as Having Space for Simultaneous Ingress and Egress.

The Fire Safe Regulations require that “all roads shall be constructed to provide a minimum of two ten (10) foot traffic lanes, not including shoulder and striping.” (14 Cal. Code Regs. § 1273.01(a).) The purpose of the road width requirement is to “provide for two-way traffic flow to support emergency vehicle and civilian egress.” (14 Cal. Code Regs. § 1273.01(a).) This project is served by Higuera Highland Lane, which does not comply with the requirements for road width in the Fire Safe Regulations.

As previously discussed, the proposed mitigation measures can aid firefighters in suppressing structure fires, but are of little utility in resolving potential blockages due to insufficient road widths in the event of a wildland fire.

II. Conclusion

For the preceding reasons, your appeal is denied. This is the final decision of the County of Santa Clara on your appeal as of the date mailed. Review of this decision is governed by Section 1094.5 *et seq.* of the Code of Civil Procedure. Pursuant to Section 1094.6 of the Code of Civil Procedure, any petition for judicial review of this decision must be filed no later than the 90th day after the decision is final.

Sincerely,

A handwritten signature in black ink, appearing to read 'H. R. Estrada', with a stylized flourish at the end.

Hector R. Estrada
Hearing Officer

cc:

Harry Freitas, Director of Roads and Airports, County of Santa Clara

Michael Alvarez, Building Official, County of Santa Clara

Dwight Good, Assistant Chief – Cooperative Fire Protection, CalFire