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Agenda Date: 10/3/2018

Agenda Placement: 7A

Napa County Planning Commission Board Agenda Letter

TO: Napa County Planning Commission

FROM: Vincent Smith for David Morrison - Director
Planning, Building and Environmental Services

REPORT BY: Donald Barrella, Planner III - 707-299-1338

SUBJECT: Avina Swimming Pool – Conservation Use Permit Exception #P18-00172-UP

RECOMMENDATION

CHRISTOPHER AND GABRIELLE AVINA SWIMMING POOL AND YARD IMPROVEMENTS / USE PERMIT EXCEPTION TO CONSERVATION REGULATIONS #P18-00172-UP

CEQA STATUS: Consideration and possible adoption of Categorical Exemptions pursuant to California Environmental Quality Act Guidelines at 14 CCR §15301 (Class 1, Minor Alteration to Existing Facilities), §15303 (Class 3, New Construction or Conversion of Small Structures), which exempts construction of swimming pools; and §15304 (Class 4, Minor Alterations to Land), which exempts minor trenching where the surface is restored. The project site is not located on any of the lists of hazardous material sites compiled pursuant to Government Code Section 65962.5.

REQUEST: Approval of an exception to the Napa County Conservation Regulations (County Code Chapter 18.108), in the form of a Use Permit, to replace an existing rear yard deck and landscape area with a new swimming pool, patio cover and decking that encroach into the minimum required 35- to 45-foot stream setback from the top of bank of Soda Canyon Creek. The project is located on an approximately 0.39 acre site containing a single family residence on the south side of Petra Drive approximately 1,200 ft. west of its intersection with Silverado Trail within the AP (Agricultural Preserve) zoning district, 1115 Petra Drive, Napa. (Assessor's Parcel No. 039-112-011).

Staff Recommendation: Find the project categorically exempt from CEQA and approve the Use Permit Exception request, as conditioned.

Staff Contact: Don Barella (707) 299-1338; email don.barella@countyofnapa.org

Applicant: Gabrielle Avina; (707) 486-3553; email gabrielle.avina@fire.ca.gov

EXECUTIVE SUMMARY**Proposed Actions:**

That the Planning Commission:

1. Finds the project qualifies as a Categorical Exemption under the provisions of the California Environmental Quality Act; and
2. Approves Use Permit P18-00172 granting an Exception to the Conservation Regulations based on Findings 2-13 of Attachment A and subject to the Conditions of Approval listed in Attachment B.

Discussion:

The applicants request approval of an exception to Napa County's Conservation Regulations (Napa County Code Chapter 18.108) in order to replace existing decking and landscape improvements in the rear yard of a their single family residence with a swimming pool, new landscaping and new decking which includes a patio cover. The subject property's rear lot line extends to the centerline of Soda Canyon Creek, and the entire rear yard and approximately half of the existing residence are located within what is now the stream setback for the creek. This property is part of the Soda Creek Subdivision established in 1950 five years before the implementation of zoning regulations in 1955. The existing residence was constructed in 1964. Napa County's Conservation Regulations were enacted in 1991 establishing development setbacks from the creek and consequently rendering this existing residence and associated rear yard improvements as pre-existing legal nonconformities.

Reworking of existing legally established nonconforming developed areas within stream setbacks can occur in three ways. Maintenance, rehabilitation, reconstruction of existing improvements with no change in use or expansion is allowed by right requiring only a building permit for improvements that require building permits. Rearrangement or alteration with no expansion of existing use can be approved through the Certificate of Legal Nonconformity process. Replacement of one allowed use with a new allowed use, such as replacing landscaping and decking with a swimming pool and decking, requires issuance of an exception in the form of a use permit.

Staff believe the required findings for grant of a use permit exception can be met for this project, and are therefore recommending project approval. The proposed improvements will be located within an area that has been developed for several decades before the creation of the stream setback regulations, and the new swimming pool and reworked deck will not discernibly change that condition. In addition, both upstream and downstream of the property site are similarly sized and oriented rural lots containing residences with rear yard improvements that all fall within the stream setback for Soda Canyon Creek. The State Department of Fish and Wildlife has reviewed the proposal and found it in compliance with watercourse protection requirements and exempt from State permitting.

FISCAL IMPACT

Is there a Fiscal Impact? No

ENVIRONMENTAL IMPACT

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Alterations to Land), which exempts minor trenching where the surface is restored. The project site is not located on any of the lists of hazardous material sites compiled pursuant to Government Code Section 65962.5.

BACKGROUND AND DISCUSSION

Applicant / Property Owner: Christopher and Gabrielle Avina; (707) 486-3553; email gabrielle.avina@fire.ca.gov

Zoning: AP (Agricultural Preserve) District

General Plan Designation: AR (Agricultural Resource)

Parcel Size: 0.39 acres

Stream Setback (Required): 35 to 45 feet from top of bank of Soda Canyon Creek

Stream Setback (Existing): None, existing improvements extend to top of stable bank

Stream Setback (Proposed): None, swimming pool located 10 ft. from top of stable bank

Application Filed: May 4, 2018

Application Complete: June 3, 2018

Adjacent General Plan Designations, Zoning Districts and Land Uses:

North: Approximately 0.5 acre Petra Drive rural residential parcels zoned AP with AR General Plan designation.

West: Approximately 0.5 acre Petra Drive rural residential parcels zoned AP with AR General Plan designation.

South: Approximately 49 acre vineyard property with vineyard access roads located at the approximate top of stable bank for Soda Canyon Creek, and zoned AP with AR General Plan designation.

East: Approximately 0.5 acre Petra Drive rural residential parcels zoned AP with AR General Plan designation.

Property History:

1950 - Subject property created as part of Soda Creek Subdivision

1955 - Zoning regulations first established in Napa County

1964 - Residence constructed

1991 - Conservation Regulations (NCC Chapter 18.108) establishing stream setbacks enacted rendering existing site improvements and residence legal nonconformities (as to setback)

1993 - Remodeling of residence occurs including addition to the house within the setback but no closer to the creek. Plans from this project indicate that rear yard decks and landscaping improvements already existed, but were replaced and/or remodeled with the 1993 project. Although the Conservation Regulations were implemented 2 years prior to this project, it is unknown why a use permit exception did not occur at the time even though the project resulted in an expansion of the building footprint within the creek setback.

Compliance History:

There have been no compliance issues on this parcel.

Discussion Points:

Exception to the Conservation Regulations – Among the purposes of the Conservation Regulations (County Code Section 18.108.010) are intentions for the County to: 1) minimize the effects of cut, fill, earthmoving, grading operations and similar activities on the natural terrain; 2) minimize soil erosion caused by human modifications to the natural terrain; 3) maintain and improve water quality by regulating stormwater quality and quantity; 4) preserve riparian areas and other natural habitat near streams; and 5) encourage development that minimizes impacts to existing land forms, avoids steep slopes and preserves existing vegetation and unique geologic features.

- 1) Minimize cut, fill, earthmoving, etc. - The vast majority of earthwork associated with the project involves excavation for the inground swimming pool. Approximately 75 cubic yards of soil will be excavated which will be spread on-site and/or off-hauled to an approved location, resulting in approximately 4 to 6 truck trips.
- 2) Minimize soil erosion - Earth disturbance work will be performed over several days outside of wet weather. The project is subject to State Regional Water Quality Control Board Stormwater Pollution Prevention Program (SWPPP) requirements administered through the County's Engineering Division, which imposes construction and post-construction pollution prevention requirements that minimizes soil erosion loss. Soil erosion potential from a project of this small scale is negligible.
- 3) Maintain / Improve Water Quality - The small scale of the project has effectively no potential to alter water quality. Since the existing improvements pre-date water quality standards, there may be some nominal improvement in water quality as a result of the new improvements being subject to current stormwater pollution prevention requirements.
- 4) Preserve riparian areas - The project will not change the adjacent riparian areas. All work will occur within areas that were anthropogenically improved several decades before riparian preservation regulations were established.
- 5) Minimize impacts to land forms - The project will not change land forms or alter existing native vegetation. There are no unique geologic features within or near the project site.

Use Permit Findings – County Code Section 18.108.040 allows exceptions to the requirements of the County's Conservation Regulations. Such requests are made in the form of a use permit application, which is subject to approval or denial by the Planning Commission. Pursuant to County Code Section 18.124.070, the Commission's decision to grant or deny a use permit must be based on findings that the use permit would not adversely affect public health, safety or welfare of the county, and that the request is consistent with the policies and standards of the county's General Plan. To justify an exception to the Conservation Regulations, additional findings are necessary, including findings that the proposed project would complement natural landforms; would require minimal grading, minimal removal of vegetation, and minimal disturbance to watercourses; and would not result in significant adverse impacts to sensitive species or stormwater quality.

Staff believe the proposal meets all required findings. The project does not change natural landforms and grading to excavate the pool is minimal. No native vegetation will be removed, and the adjacent watercourse will not be altered. Sensitive species will not be impacted, and the project is required to comply with stormwater pollution prevention requirements.

Compliance with Other Regulations – Landscaping and pavement work is not subject to additional permitting. Building permits are required for the swimming pool and decking with patio cover. The State Department of Fish and Wildlife have determined that the project is exempt from streambed alteration permitting. The Regional Water

Quality Control Board's SWPPP is implemented by the County's Engineering Division through the building permit process.

Decision-making Options:

Upon consideration of additional public comment and close of the public hearing, the Commission may take one of the following actions:

Option 1: Approve Applicant's Proposal (Staff Recommendation)

This option would allow the proposed swimming pool and yard improvements to proceed to building permit issuance as proposed.

Action Required – Follow the proposed action listed in the Executive Summary. If recommended condition(s) of approval are to be amended, identify the condition and specify the desired revision thereto.

Option 2: Deny the Requested Use Permit

Denial of the requested Use Permit Exception to the Conservation Regulations would preclude construction of the proposed swimming pool. This existing lawn, hardscape, decking and landscaping could be replaced, but the patio cover could not be installed unless it could be accomplished without earth disturbance. In denying the project the Commission should articulate which required finding(s) have not been satisfactorily addressed.

Action Required – Commission would make a tentative action to deny the project and remand the matter to staff for preparation of required findings to return to the Commission at a future meeting date.

Option 3: Continuance Option

The Commission may continue an item to a future hearing date, at its discretion.

SUPPORTING DOCUMENTS

- A . Proposed Findings
- B . Proposed Conditions of Approval & Agency Conditions
- C . CEQA Memo
- D . Application Submittal Materials
- E . Graphics

Napa County Planning Commission: Approve

Reviewed By: Vincent Smith