

RESOLUTION NO. XXXX

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CAPITOLA
UPHOLDING THE PLANNING COMMISSION DECISION TO APPROVE THE 1410 PROSPECT
AVENUE APPLICATION FOR A VARIANCE WITH ADDITIONAL CONDITIONS OF APPROVAL
AND FINDINGS ADDRESSING THE MATTER OF THE APPEAL.**

WHEREAS, on August 24, 2021, the City received an application proposing to demolish an existing 1,606 square-foot, two story, single family residence and construct a new 1,422 square-foot, two story, single family residence with a 796 square foot basement. The applicant sought a design permit, historical alterations permit, variance, and coastal development permit; and

WHEREAS, on January 26, 2022, the application was reviewed by the Development and Design Review Committee. The committee provided guidance on several items which the applicant addressed in a revised plan; and

WHEREAS, on April 7, 2022, the Planning Commission unanimously approved the application for a Design Permit, Historic Alteration Permit, Variance, and Coastal Development Permit (CDP), to demolish an existing residence and construct a new home; and

WHEREAS, on April 18, 2022, the City received an appeal from Santa Cruz County Regional Transportation (RTC) (Attachment 1) and the RTC appealed the Planning Commission's decision granting a variance; and

WHEREAS, on August 18, 2022, the City received an independent peer review letter for slope stability analysis from Pacific Crest Engineering; and

WHEREAS, on August 31, 2022, the applicant submitted a revised plan set which relocated the primary structure three feet away from the rear property line; and

WHEREAS, on September 8, 2022, the RTC submitted a follow-up letter in response to the peer review findings and proposed design revisions, indicating the revised proposal was generally satisfactory and that the RTC would agree to retract its appeal provided several considerations were addressed; and

WHEREAS, the updated plans and peer review align with the purpose of the zoning code to implement the general plan and the local coastal program land use plan and to protect the public health, safety, and welfare; and

WHEREAS, the updated plans with increase setbacks will maintain and enhance coastal access and visitor serving facilities and services while supporting a balance transportation system; and

WHEREAS, the City Council held a duly noticed public hearing on September 22, 2022, providing the opportunity for members of the public to provide comment on the appeal; and

NOW, THEREFORE, BE IT HEREBY RESOLVED by the City Council of the City of Capitola that City Council upholds the Planning Commission decision to approve the 1410 Prospect Avenue application for a variance with additional conditions of approval and finding as underlined addressing the matter of the appeal, as follows:

Conditions of Approval:

1. The project approval consists of Design Permit, Historical Alteration Permit, and Variance to allow the demolition of an existing historic structure and construction of a 1,422 square-foot single-family residence with a 796 square-foot basement. The project includes a remodel of an existing 280 square-foot detached garage, and variance for the primary structure setbacks and maximum floor area ratio. The maximum Floor Area Ratio for the 2,416 square foot property is 58% (1,401 square feet). The total FAR of the project is 59.6% with a total of 1,440 square feet, exceeding the maximum FAR by 39 feet. The application does comply with front, side, and rear yard setbacks. A variance for setbacks and floor area ratio was approved for

the project. The proposed project is approved as modified on the final plans reviewed and approved by the City Council on September 22, 2022, except as modified through conditions imposed by the City Council during the hearing. The modified plans and conditions replace the April 7, 2022, Planning Commission approval.

2. Prior to construction, a building permit shall be secured for any new construction or modifications to structures authorized by this permit. Final building plans shall be consistent with the plans approved by the Planning Commission. All construction and site improvements shall be completed according to the approved plans
3. At time of submittal for building permit review, the Conditions of Approval must be printed in full on the cover sheet of the construction plans.
4. At time of submittal for building permit review, Public Works Standard Detail SMP STRM shall be printed in full and incorporated as a sheet into the construction plans. All construction shall be done in accordance with the Public Works Standard Detail BMP STRM.
5. Prior to making any changes to approved plans, modifications must be specifically requested and submitted in writing to the Community Development Department. Any significant changes to the size or exterior appearance of the structure shall require Planning Commission approval.
6. Prior to issuance of building permit, a landscape plan shall be submitted and approved by the Community Development Department. The landscape plan can be produced by the property owner, landscape professional, or landscape architect. Landscape plans shall reflect the Planning Commission approval and shall identify type, size, and location of species and details of any proposed (but not required) irrigation systems.
7. Prior to issuance of building permit, all Planning fees associated with permit #21-0376 shall be paid in full.
8. Prior to issuance of building permit, the developer shall pay Affordable housing in-lieu fees as required to assure compliance with the City of Capitola Affordable (Inclusionary) Housing Ordinance.
9. Prior to issuance of a building permit, the applicant must provide documentation of plan approval by the following entities: Santa Cruz County Sanitation Department, Soquel Creek Water District, and Central Fire Protection District.
10. Prior to issuance of building permits, a drainage plan, grading, sediment and erosion control plan, shall be submitted to the City and approved by Public Works. The plans shall be in compliance with the requirements specified in Capitola Municipal Code Chapter 13.16 Storm Water Pollution Prevention and Protection.
11. Prior to issuance of building permits, the applicant shall submit a stormwater management plan to the satisfaction of the Director of Public Works which implements all applicable Post Construction Requirements (PCRs) and Public Works Standard Details, including all standards relating to low impact development (LID; including a detail of the pervious pavers and drainage emitter as shown on plans 8/24/22).
12. Prior to any land disturbance, a pre-site inspection must be conducted by the grading official to verify compliance with the approved erosion and sediment control plan.

13. Prior to any work in the City road right of way, an encroachment permit shall be acquired by the contractor performing the work. No material or equipment storage may be placed in the road right-of-way.
14. Prior to issuance of building permit, the Building Official may require additional information from the applicant related to the geotechnical report.
15. Landscaping that encroaches into the city right-of-way requires a minor revocable encroachment permit. Prior to issuance of a building permit, the applicant shall submit a completed Revocable Encroachment Permit application.
16. Structural and surface runoff shall flow towards the Prospect Avenue frontage and shall not flow onto RTC property to the rear.
17. Prior to entry or any equipment or material storage within the SCBRL (RTC) right-of-way, the applicant shall first obtain a right-of-entry agreement from the RTC.
18. Prior to issuance of a building permit, the City shall consult with the RTC with respect to the required plans and technical reports associated with this permit. This is for informational purposes only. The RTC has no formal review authority over the application.
19. During construction, any construction activity shall be subject to a construction noise curfew, except when otherwise specified in the building permit issued by the City. Construction noise shall be prohibited between the hours of nine p.m. and seven-thirty a.m. on weekdays. Construction noise shall be prohibited on weekends with the exception of Saturday work between nine a.m. and four p.m. or emergency work approved by the building official. §9.12.010B
20. Prior to a project final, all cracked or broken driveway approaches, curb, gutter, or sidewalk shall be replaced per the Public Works Standard Details and to the satisfaction of the Public Works Department. All replaced driveway approaches, curb, gutter or sidewalk shall meet current Accessibility Standards.
21. Prior to issuance of a Certificate of Occupancy, the applicant shall demonstrate compliance with the tree removal permit authorized by this permit for two trees to be removed from the property. Replacement trees shall be planted to not create slope stability issues related to irrigation to the satisfaction of the Community Development Director. Required replacement trees shall be of the same size, species and planted on the site as shown on the approved plans.
22. Prior to issuance of a Certificate of Occupancy, compliance with all conditions of approval shall be demonstrated to the satisfaction of the Community Development Director. Upon evidence of non-compliance with conditions of approval or applicable municipal code provisions, the applicant shall remedy the non-compliance to the satisfaction of the Community Development Director or shall file an application for a permit amendment for Planning Commission consideration. Failure to remedy a non-compliance in a timely manner may result in permit revocation.
23. This permit shall expire 24 months from the date of issuance. The applicant shall have an approved building permit and construction underway before this date to prevent permit

- expiration. Applications for extension may be submitted by the applicant prior to expiration pursuant to Municipal Code section 17.156.080.
24. The planning and infrastructure review and approval are transferable with the title to the underlying property so that an approved project may be conveyed or assigned by the applicant to others without losing the approval. The permit cannot be transferred off the site on which the approval was granted.
 25. Upon receipt of certificate of occupancy, garbage and recycling containers shall be placed out of public view on non-collection days.
 26. Prior to issuance of building permits, the building plans must show that the existing overhead utility lines will be underground to the nearest utility pole.
 27. Prior to demolition of the existing structure, a pest control company shall resolve any pest issue and document that all pest issues have been mitigated. Documentation shall be submitted to the city at time of demolition permit application.
 28. The garage doorway on the east (rear) elevation shall be of a sliding barn-door style or similar in such a way that no portion of the opening extends beyond the subject property and that vehicles may not pass through to the backyard.
 29. Prior to issuance of a building permit, an archaeological survey report and monitoring plan shall be prepared for the development.
 - a. The archaeological survey report shall include, at a minimum, a field survey by an archaeologist, survey of available state resource information at the Northwest Regional Information Center of the California Archaeological Inventory, description of the site's sensitivity, and any identified archaeological resources. The city will initiate the preparation of the survey report at the applicant's expense utilizing a qualified archaeologist selected by the community development department.
 - b. The cultural resource monitoring plan shall, at a minimum:
 - i. Identify all areas of proposed grading or earth disturbing activities which have the potential to impact historic or prehistoric resources;
 - ii. Identify the qualified archaeological monitor assigned to the project;
 - iii. Describe the proposed monitoring program, including the areas to be monitored, the duration of monitoring, and monitoring protocols;
 - iv. Outline procedures to be followed if cultural resources are discovered, including requirements to stop work, consultation with the City and any Native American participation (as appropriate), resource evaluation, mitigation plan requirements, and protocols if human remains are encountered; and
 - v. Include post-monitoring reporting requirements and curation procedures.
 30. Prior to issuance of a building or grading permit, the applicant shall submit evidence that a qualified archaeological monitor has been retained to oversee all earthwork activities.
 31. The archaeological monitor shall attend a construction meeting to coordinate required grading monitoring activities with the construction manager and contractors.
 32. If resources are encountered, the archaeological monitor shall have the authority to stop work until a significance determination is made.

33. If significant resources are discovered, work may remain halted at the archaeologist's discretion until such time that a mitigation plan has been prepared and implemented with the concurrence of the Community Development Department.
34. Following completion of archaeological monitoring, the archaeologist shall submit a summary and findings of the monitoring work.
 - a. If no resources are recovered, a brief letter report shall be completed that includes a site record update on a California Department of Park and Recreation form 523.
 - b. If significant resources are recovered, the report shall include a preliminary evaluation of the resources, a preliminary map of discovered resources, a completed California Department of Park and Recreation form 523, and recommendations for additional research if warranted.
35. If human remains are found at any time, the immediate area of the discovery shall be closed to pedestrian traffic along the Prospect Avenue street frontage and the Santa Cruz County Coroner must be notified immediately. If the Coroner determines that the remains are Native American, the Native American Heritage Commission shall be notified as required by law.
36. The archaeological monitor may discontinue monitoring with approval by the Community Development Director if he/she finds that site conditions, such as the presence of imported fill or other factors, indicates that significant prehistoric deposits are not possible.
37. The archaeologist shall prepare a grading monitoring letter report summarizing all monitoring work and any recovered resources. The letter report shall be submitted to the Community Development Department within 30 days following completion of grading activities.

Design Permit Findings

A. The proposed project is consistent with the general plan, local coastal program, and any applicable specific plan, area plan, or other design policies and regulations adopted by the city council.

Community Development Staff and the Planning Commission have reviewed the proposed demolition and similar construction of an existing residence and remodel of an existing garage. With the granting of a variance to the required setbacks and maximum floor area ratio, the project secures the purpose of the General Plan, and Local Coastal Program, and design policies and regulations adopted by the City Council.

B. The proposed project complies with all applicable provisions of the zoning code and municipal code.

Community Development Staff and the Planning Commission have reviewed the application for the demolition and replacement of an existing residence and remodel of an existing garage. With a granting of a variance to the required setbacks and maximum floor area ratio, the project complies with all applicable provisions of the zoning code and municipal code.

C. The proposed project has been reviewed in compliance with the California Environmental Quality Act (CEQA).

Section 15302 of the CEQA Guidelines exempts the replacement or reconstruction of existing structures and facilities where the new structure will be located on the same site as the structure replaced and will have substantially the same purpose and capacity as the structure replaced. This project involves replacement of a single-family residence and remodel of an existing garage subject to the R-1 (single-family residence) Zoning District. No adverse environmental impacts were discovered during review of the proposed project.

D. The proposed development will not be detrimental to the public health, safety, or welfare or materially injurious to the properties or improvements in the vicinity.

Community Development Staff and the Planning Commission have all reviewed the reviewed the application. The proposed project will not be detrimental to the public health, safety, or welfare or materially injurious to the properties or improvements in the vicinity. The project will improve parking in the vicinity by meeting on-site requirements.

E. The proposed project complies with all applicable design review criteria in Section 17.120.070 (Design review criteria).

The Community Development Staff and the Planning Commission have reviewed the application. With the granting of a variance to the required setbacks and maximum floor area ratio, the proposed complies with all applicable design review criteria in Section 17.120.070.

F. The proposed project maintains the character, scale, and development pattern of the neighborhood.

Community Development Staff and the Planning Commission have all reviewed the application. The design of the reconstructed residence and remodeled garage will fit in nicely with the existing neighborhood. The project will maintain the character, scale, and development pattern of the neighborhood and of the existing dwelling.

Historic Alteration Findings

A. The historic character of a property is retained and preserved. The removal of distinctive materials or alteration of features, spaces, and spatial relationships that characterize the property is avoided.

Community Development Staff and the Planning Commission have reviewed the proposed similar construction of the historic structure and determined that the building will be recreated using existing documentary evidence taken from the site prior to demolition. The new building will be similar to the existing house in scale, massing, design, and the use of historic wood materials.

B. Distinctive materials, features, finishes, and construction techniques or examples of fine craftsmanship that characterize a property are preserved.

Community Development Staff and the Planning Commission have reviewed the proposed project and determined that the new structure will preserve the historic streetscape and alternating rooflines of Prospect Avenue, including the overall scale, massing, materials, placement.

C. Any new additions complement the historic character of the existing structure. New building components and materials for the addition are similar in scale and size to those of the existing structure.

Community Development Staff and the Planning Commission have reviewed the proposed determined that alterations from the original design, such as the rear deck, are in similar scale and size and compliment the historic character of the site and structure. The remodeled garage complements the primary structure and pattern of alternating rooflines of Prospect Avenue.

D. Deteriorated historic features are repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature matches the old in design, color, texture, and, where possible, materials.

Community Development Staff and the Planning Commission have reviewed the proposed project and determined that the existing structure has been subject to numerous structural and material alterations and replacements with limited original materials. The proposed

similar construction will recreate distinctive features and incorporate in-kind replication of historic wood materials.

E. Archeological resources are protected and preserved in place. If such resources must be disturbed, mitigation measures are undertaken.

Community Development Staff and the Planning Commission have conditioned the project to include mitigation measures should archeological resources be identified.

Variance Findings

A. There are unique circumstances applicable to the subject property, including size, shape, topography, location, or surroundings, that do not generally apply to other properties in the vicinity or in the same zone as the subject property.

The unique circumstance applicable to the subject property is that the property is a historic site, with an irregularly shaped lot that is both small and shallow by Capitola standards. The variance allows the construction of a residence that is comparably-sized with improved siting on the lot and will continue to contribute to the historic context of the Prospect Avenue streetscape.

B. The strict application of the zoning code requirements would deprive the subject property of privileges enjoyed by other property in the vicinity or in the same zone as the subject property.

The substandard lot size is unique with depths ranging from 29 to 46 feet. Incorporating the required 15 feet front yard setback and 8 feet rear yard setback, results in a limited building pad of 778 square feet. The existing primary structure has a footprint 1200 square feet, and the proposed footprint is 978 square feet. The overwhelming majority of properties along the bluff side of Prospect Avenue do not comply with all minimum setbacks for primary structures, accessory structures, or both. In particular, many structures are located along the front lot lines. Lots decrease in size towards the southern end of the block and are typified by increased FAR and reduced setbacks. The subject property is the second most southern lot and is also one of the smallest on Prospect Avenue.

C. The variance is necessary to preserve a substantial property right possessed by other property in the vicinity or in the same zone as the subject property.

The variance is necessary to preserve the use already enjoyed by the subject property and is already enjoyed in the vicinity with respect to lot siting and massing.

D. The variance will not be materially detrimental to the public health, safety, or welfare, or be injurious to the properties or improvements in the vicinity or in the same zone as the subject property.

The variance will not impose any detrimental impacts on the public health, safety, or welfare, or be injurious to properties or improvements in the vicinity or in the same zone as the subject property. In particular, proposed project has been designed to remove existing structural encroachments into the public right of way and improve parking.

E. The variance does not constitute a grant of special privilege inconsistent with the limitations upon other properties in the vicinity or in the same zone as the subject property.

The majority of properties on the bluff-side of Prospect Avenue do not comply with required setbacks. On the southern half of the block many properties additionally do not comply with current floor area ratio standards.

F. The variance will not have adverse impacts on coastal resources.

The variance will not adversely impact coastal resources. Although there are no coastal resources on the subject property, a public pathway exists between the rear of the lot and the railway. Conditions have been added to limit construction impacts to the site and surrounding area.

Coastal Findings

A. The project is consistent with the LCP land use plan, and the LCP implementation program.

The proposed development conforms to the City's certified Local Coastal Plan (LCP) land use plan and the LCP implementation program.

B. The project maintains or enhances public views.

The proposed project is located on private property at 1410 Prospect Avenue. The project will not negatively impact public landmarks and/or public views.

C. The project maintains or enhances vegetation, natural habitats and natural resources.

The proposed project is located at 1410 Prospect Avenue. The near natural landforms and a coastal trail. Conditions have been added to limit impacts during construction, protect vegetation, and maintain natural vegetation cover.

D. The project maintains or enhances low-cost public recreational access, including to the beach and ocean.

The project involves the demolition and replacement of an existing residence and remodel of an existing garage, which will not negatively impact low-cost public recreational access.

E. The project maintains or enhances opportunities for visitors.

The project involves the demolition and replacement of an existing residence and remodel of an existing garage, which will not negatively impact visitor serving opportunities.

F. The project maintains or enhances coastal resources.

The project involves the demolition and replacement of an existing residence and remodel of an existing garage, which will not negatively impact coastal resources. Although there are no coastal resources on the subject property, a public pathway exists between the rear of the lot and the railway. Conditions have been added to limit construction impacts to the site and surrounding area.

G. The project, including its design, location, size, and operating characteristics, is consistent with all applicable design plans and/or area plans incorporated into the LCP.

With the granting of a variance, the proposed residential project complies with all applicable design criteria, design guidelines, area plans, and development standards. The operating characteristics are consistent with the R-1 (Single-Family Residential) zone.

H. The project is consistent with the LCP goal of encouraging appropriate coastal development and land uses, including coastal priority development and land uses (i.e., visitor serving development and public access and recreation).

The project involves the demolition and replacement of an existing residence and remodel of an existing garage on a residential lot of record. The project is consistent with the LCP goals for appropriate coastal development and land uses. The use is an allowed use consistent with the R-1 zoning district.

I HEREBY CERTIFY that the foregoing resolution was passed and adopted by the City Council of the City of Capitola on the 22nd day of September 2022, by the following vote:

AYES:
NOES:
ABSENT:
RECUSED:

ATTEST:

Sam Storey, Mayor

Chloé Woodmansee, City Clerk