

**TOWN OF MORAGA
DESIGN REVIEW BOARD MEETING
MINUTES**

June 24, 2013

I. CALL TO ORDER AND ROLL CALL

A regular meeting of the Design Review Board (DRB) was called to order by Chair Helber at 7:00 P.M. in the Moraga Library Meeting Room, 1500 Saint Mary's Road, Moraga, California.

NOTE: THE RECORDING FOR THIS MEETING STARTED MID-WAY THROUGH THE SECOND ITEM, 403 REDFIELD PLACE, DRB 10-13.

Present: Boardmembers Glover, Zhu, Chair Helber

Absent: Boardmembers Escano-Thompson, Kirkpatrick

Staff: Shawna Brekke-Read, Planning Director
Ellen Clark, Senior Planner
Pierce Macdonald Powell, Senior Planner

A. Conflict of Interest

B. Contact with Applicants

II. PUBLIC COMMENTS

III. ADOPTION OF THE CONSENT AGENDA

- A. **May 2, 2013 Minutes**
- B. **May 13, 2013 Minutes**
- C. **May 28, 2013 Minutes**
- D. **Adoption of Meeting Agenda**

IV. DESIGN REVIEW

A. 4 Peralta Court DRB 7-13

Applicant: Amy and Peter Jeter, 4 Peralta Court, Moraga, CA 94556

Proposed Application: Request for a 448-square foot second story addition including Design Guidelines exception to allow more than two (2) story homes side-by-side and an exception to maximum Floor Area Ratio. (2DU-Acre, EMC)

B. 403 Redfield Place, DRB 10-13

Applicant: Calvin Craig Landscaping, 2380 W. Shell Avenue, Martinez, CA 94553

Proposed Application: Request for the construction of a new 12-foot tall pergola and a 7-foot tall gas fireplace, within the 15-foot property setback. (3DU-Acre, EMC)

Senior Planner Ellen Clark presented the request for the construction of a new 12-foot tall pergola and a 7-foot tall gas fireplace within the 15-foot property setback in the 3DU-Acre. Due to the project's consistency with the Zoning Ordinance and General Plan, and minimal impact on surrounding properties, staff recommended that the DRB approve the Draft Action Memorandum for Design Review 10-13, including conditions of approval.

PUBLIC COMMENTS OPENED

(The recording of the meeting, CD File 801 0059, started at this point.)

Calvin Craig, Calvin Craig Landscaping, explained that fencing and materials which would be brought through a fence on the property would be secured at the end of each day. No fencing or materials would be stored on the street.

Chair Helber affirmed with the applicant there would be no outdoor sink as part of the project. With respect to the Draft Action Memorandum, he recommended that Condition 8 under Part 4: Conditions of Approval, Prior to Building Permit Issuance, be stricken from the conditions of approval.

Ms. Clark affirmed the condition could be stricken from the conditions of approval.

Boardmember Zhu liked the overall design, pitch and appearance, and verified with the applicant that no roof decking had been proposed.

PUBLIC COMMENTS CLOSED

Speaking to Condition 2 (a) under the proposed Conditions of Approval, Ms. Clark explained the intent of the condition to address screening that was most needed along the west property line, which was the shortest distance between the neighbors.

Chair Helber recommended the first sentence of Condition (a) be amended to read:

Prior to issuance of a building permit, the applicant shall submit a landscape plan that shows trees or similar screening vegetation to be placed in the area between the proposed pergola and fireplace and the fence where adequate vegetative buffer does not exist.

Boardmember Glover sought an additional condition to state that *The storage of materials shall not be permitted beyond one week of delivery.* He also recommended that the fence be an orange color.

Ms. Brekke-Read recommended the second sentence under Condition 10 be replaced with language to reflect *The storage of materials shall not be permitted one week beyond delivery.*

On motion by Boardmember Zhu, seconded by Boardmember Glover to adopt the Draft Action Memorandum dated June 24, 2013 approving Design Review 10-13 for Calvin Craig Landscaping at 403 Redfield Place, subject to the findings and conditions of approval, as discussed and as modified. The motion carried by the following vote:

Ayes: Glover, Zhu, Helber
Noes: None
Abstain: None
Absent: Escano-Thompson, Kirkpatrick

Chair Helber identified the 10-day appeal process of a decision of the DRB in writing to the Planning Department.

C. 425 Moraga Road, DRB 15-11

Applicant: Thomas Bundarin, 6708 Foothill Boulevard, Tujunga,, CA 91042

Proposed Application: Request to install new signage and exterior lighting at, and make exterior modifications to, an existing service station, continued from May 28, 2013 (LC, EMC)

Senior Planner Ellen Clark reported the item had been continued from the DRB meeting of May 28, 2013. The DRB had reviewed the request to install new signage and exterior lighting at, and make exterior modifications to, an existing service station as required, and as part of the conditions of approval of a Conditional Use Permit to re-open the service station with conversion of existing service bays to a snack shop and car wash. During the May 28 DRB meeting, staff had recommended a number of changes to the proposal as documented in the June 24, 2013 staff report. The DRB had generally agreed with the staff recommended conditions and directed the applicant to prepare revised plans to be re-submitted to the DRB so that it was clear what was being approved and acceptable pursuant to the DRB recommendations. Staff had worked closely with the applicant to review the revised site plans and staff affirmed that all of the requested changes had been made.

Ms. Clark clarified that the applicant had originally proposed three industrial style light fixtures; two existing and one new fixture. Staff had recommended and the DRB had concurred that the lights be limited to no more than two fixtures, and modified to include more decorative elements in the Mission style design features of the building and the surrounding properties. The applicant had proposed two goose style wall-mounted light fixtures as shown in the revised attachments to the staff report consistent with the photometric light spillage requirements. The light would be contained on site and be down-directed appropriately.

Staff had also proposed that the canopy sign be eliminated from the plan; the number of wall signs be limited, limited in size, and be more uniform with colors more compatible with the building colors; and that the monument sign be reduced in size. The applicant had complied with all suggestions and the revised plans had identified all revisions. In addition, the monument sign was to be no greater than 30 square feet on each side and be externally lit by two small-grounded mounted spotlights.

Ms. Clark explained that the original color scheme had consisted of a very bright white color with medium blue trim, and the existing red terra cotta colored metal roof. The DRB had requested a more subtle color scheme with browns and tans. The applicant had revised the plans to reflect a light tan building body with darker brown tan fascia trim and the canopy sign had a similar color scheme, consistent with the DRB and staff recommendations and direction.

With those revisions, Ms. Clark recommended minimal conditions of approval including the propane enclosure to be painted the same dark tan color as the building fascia trim, and a number of conditions regarding the signage pursuant to the requirements of the Sign Ordinance as contained in the Moraga Municipal Code (MMC). She recommended that the DRB approve the application and she acknowledged the applicant had worked with staff to address the staff and DRB requests to upgrade the building and re-open the service station.

Responding to the DRB, Ms. Clark clarified that the applicant had complied with the recommendation for no more than two building-mounted signs limited to a maximum of 20 square feet each. The lettering for the signs would be dark brown and not red as originally proposed.

PUBLIC COMMENTS OPENED

Peter Tobin, Barghausen Consulting Engineering, commended staff working with the applicants on the application, as revised. He presented a sample of the two colors that had been identified for the building elevations where the actual body of the building would be a lighter tan color and the fascia would be the darker brown color. He expressed his hope that the revisions clarified many of the concerns expressed by staff and the DRB. He also identified the two gooseneck lights proposed for the front of the building. Emphasizing the need for greater illumination, he asked for approval of a total of four lights in order to wash the wall and pilasters adjacent to the car wash. He suggested the additional lights would not impact the photometric study and emphasized the safety concerns with the desire to provide adequate lighting for people to move around. He otherwise agreed with the staff recommended conditions of approval.

PUBLIC COMMENTS CLOSED

Responding to the applicant's request for four lights, Ms. Clark suggested the gooseneck light fixtures were attractive and would not create a glare issue and she was not opposed to the request. She also clarified that the previous approval of the use permit for the service station, which had previously been considered by the DRB, had recommended a smooth stucco finish to replace the rock facing.

Mr. Tobin added, when asked, that the water foundation was on its way with the design consistent with the DRB recommendation.

Ms. Brekke-Read described the water foundation as more traditional than originally proposed.

Ms. Clark clarified the language with respect to Condition 11 in the Draft Action Memorandum, which had come directly from the MMC, was intended not to advertise the business and services, but identify promotional/discount/secondary items. She stated that the condition could be eliminated if the DRB so directed.

Ms. Brekke-Read noted that the MMC predated the way that service station pumps were currently designed; Sheet SA-1 of the plans had shown the design for the dispensers and the valances. She clarified that Condition 11 would not permit additional signage.

Chair Helber recommended the elimination of Condition 11.

Mr. Tobin clarified that no additional signage had been proposed other than what had been identified in the application.

Chair Helber identified a typographical error in Condition 10 (d), and offered a motion for approval, subject to the staff recommended conditions of approval, as modified, and also recommended approval of the applicant's request for two additional gooseneck light fixtures similar to those proposed on either side of the window, to be added to either side of the car wash at a similar height [Detail C, Drawing AS-1].

Ms. Clark also asked that the parenthesis shown at the end of Condition 12 be eliminated.

On motion by Chair Helber, seconded by Boardmember Zhu, to adopt Draft Action Memorandum #2 approving DRB 15-11 for Thomas Bundarin at 425 Moraga Road, subject to the findings and conditions as shown, and as modified. The motion carried by the following vote:

Ayes:	Glover, Zhu, Helber
Noes:	None
Abstain:	None
Absent:	Escano-Thompson, Kirkpatrick

Chair Helber identified the 10-day appeal process of a decision of the DRB in writing to the Planning Department.

V. ROUTINE AND OTHER MATTERS

A. Planning Commission Liaison Report - Kline

Planning Commissioner Kline reported that the Planning Commission had met on June 17 and had approved two variance requests, one of which he had opposed; considered the adequacy of the Camino Ricardo Draft Environmental Impact Report (DEIR); and considered and discussed staff recommended amendments to the MMC and setback requirements, both items which were also on the DRB agenda for discussion.

- B. Consider a Recommendation to the Planning Commission to Amend Chapter 8.72 (Design Review) of Title 8, Planning and Zoning, of the Town of Moraga Municipal Code to (1) Clarify Thresholds for Design Review; (2) Clarify Discretion of the Planning Director to Determine When Projects are Exempt from Design Review; (3) Allow Design Review Administrator to Request Additional Information and/or Waive Submittal Requirements; (4) Allow Administrative Design Review in Non-Residential and Multi-Family Zoning Districts; and (5) Clarify List of Exemptions from Design Review for Single- Family Zoning Districts.**

Senior Planner Pierce Macdonald Powell explained that the item had been scheduled for DRB consideration on June 10, 2013 although due to a lack of quorum that meeting had been canceled. The proposed amendments had been discussed by the Planning Commission at its meeting on June 17, 2013, when a great deal of feedback had been provided. The June 17 Planning Commission meeting had been noticed in the local newspaper, the About Town newsletter, the Town website, and staff was in the process of gathering public information. She noted that one of the Town Council's goals in the next budget called for the comprehensive review of planning and zoning regulations. At this time, the item was an interim measure to improve the function of the MMC and respond to concerns and frustrations expressed by applicants. She read into the record the MMC section regarding design review, noting that all applications for a design of a building which required a use permit or building permit required DRB review, which was problematic for those applicants desirous to conduct routine repairs.

Ms. Macdonald Powell explained that the design review approach, as drafted by staff, would allow a more general exemption for some Single-Family Residential changes, similar to those already allowed for an exemption; introduce an administrative design review process for changes to existing buildings and minor landscaping changes for districts other than Single-Family Residential and include Commercial, Multifamily, Institutional/College; and allow limited exemptions in those districts other than Single-Family Residential Districts.

Ms. Macdonald Powell stated that the June 24, 2013 staff report, as contained in the DRB packets, had identified the specific code sections of the MMC that may be changed. She asked the DRB for direction regarding the type of exemptions and the limited scope of exemptions the DRB may consider appropriate to be introduced as part of the amendments to the MMC.

Ms. Macdonald Powell identified the two approaches outlined in the staff report including the preparation of a list of specific types of projects that would be understood to be exempt from any design review, although staff acknowledged such a list may be lengthy and may not give the Design Review Administrator any discretion over changes. The other approach would be to develop criteria for the types of projects the Design Review Administrator may consider for exemption with a review process over the counter. Other procedural changes included changes to the list of application requirements, other than Single-Family Residential Districts. Staff proposed some leeway to customize the list based on a specific scope of a project, and in some rare cases, require items that may not be specifically listed in the MMC but necessary for the review of the project.

Ms. Macdonald Powell advised that during the June 17 Planning Commission meeting, Commissioners had been interested in the staff ideas and had offered feedback; the Commission comments had been summarized in the staff report. There had also been feedback from the community. She acknowledged a letter from Moraga resident Dave Bruzzone, copies of which had been included in the DRB packets, who had expressed concern with the potential waiver of some submittal requirements which would allow the Planning Director/Design Review Administrator to permit items not specifically listed in the ordinance, and which may make the process more complicated. She reported that she had spoken with Mr. Bruzzone that day and explained that the MMC already allowed the Planning Commission and the DRB the ability to request items not specifically listed in the ordinance, and that the creation of the administration process would allow the Planning Director/Design Review Administrator to function as the DRB or Planning Commission. The intent for the amendments was to make the process more straightforward to allow existing businesses and property owners an easier way to maintain their properties.

Ms. Macdonald Powell explained that the Planning Commission would meet again on July 1, 2013 and would be provided with additional information. She presented to the DRB a decision tree/flow chart to show how the projects would be processed under the proposed amendments along with analyses and research from Lafayette, Orinda, and Danville. She emphasized the importance of trying to work in tandem with the neighboring communities and walked the DRB through the additional information at this time.

Ms. Macdonald Powell identified the two approaches staff had recommended to formulate exemptions shown as Attachment B in the staff report, Implementation Procedures. She noted that the Planning Commission had been desirous to make the language as clear as possible but not to make the process too inflexible. She asked the DRB to provide direction, as to whether the Town ordinance should be very specific about types of exemptions or create criteria when considering the exemptions. She emphasized that the Planning Commission had been very clear that the language should be transparent, and that the process used to determine whether a project was exempt from DRB review be clear and concise. She welcomed input from the DRB at this time.

PUBLIC COMMENTS OPENED

Steve Forster, Architect, Pleasant Hill, commented that the MMC contained conflicting language creating confusion for staff and homeowners as to its interpretation. He specifically cited Section 8.68.060 of the MMC which professionals and homeowners relied upon when designing a project, particularly as it related to setbacks. He cited three local projects in which he been involved and had been completed prior to the Town's incorporation in 1974, all of which had been successful with no neighbor objections. He cited a current project on Camino Ricardo which was being required to comply with the current Zone 1 rules and which was similar to 26 other homes on Camino Ricardo, constructed prior to 1974, and which complied with Contra Costa County regulations in terms of lot size, width, and 10-foot setback requirements stating that the requirement for a 20-foot setback would make it almost impossible to design an addition for his Camino Ricardo project.

Mr. Forster noted the purpose of the design review process was to avoid substandard development, and to ensure improvements within a residential development and maintain consistent standards of design, all of which was intended to inspire with his architecture. He asked that the DRB recommend to the Planning Commission consideration of moving forward with the adoption of Alternative B.

Judy Dinkle, Moraga, Residential Designer/Builder, who was also working with Mr. Forster, thanked staff for all of the information brought forward on the issue. She noted that approximately 79 percent of the homes in Moraga would be affected by the outcome of the decision under discussion. She advocated allowing additions that followed the County setbacks, pointed out that many of the yards in Moraga were level and flat for a short distance before they downgraded, and if the Town were to require an addition to move into the available flat yard an additional ten feet it would remove a portion of the flat yard affecting the usable space inside and outside of a potential addition. She emphasized the consequences of such an action for those desirous to improve their homes and make the best use of the entire parcel.

PUBLIC COMMENTS CLOSED

In response to the DRB, Ms. Macdonald Powell described the differences between the DRB review and administrative review processes. She reiterated that the item had been noticed for a public hearing before the Planning Commission on July 1, 2013, with an advertisement published in the Contra Costa Times, About Town newsletter, the Town website, and postings at Moraga Commons, Town Hall, the Hacienda, and the Moraga Library. She reiterated that the item would be heard by the Planning Commission on July 1, 2013 and likely again on July 15, 2013. After its summer recess, the item would be brought to the Town Council. There would be many opportunities for public input. She clarified that there were some items that did not need to be codified in the text of the MMC but would help everyone involved to know the intent behind the changes. While the ordinance was being introduced and applied to projects, staff would meet with the Chair of the DRB to discuss how the ordinance was being implemented in order to keep everyone informed.

As to Item 7, as shown in Attachment B, Implementation Procedures, and in response to concerns from the DRB, Ms. Clark acknowledged the language in that item could be modified to state that at the request of the DRB Chair, the process could be reinstated at any point or continued for an additional period to allow the DRB the ability to request that the review start again for any reason.

Ms. Brekke-Read agreed that such an amendment would be a good idea. She acknowledged that the Chair of the Planning Commission had expressed concern with longevity, consistency, and concern with changes in staff in the future. The Planning Commission Chair wanted to ensure that staff was on the same page as the Planning Commission and the DRB. She acknowledged that the Chair of the DRB would likely change more often than planning staff.

Ms. Macdonald Powell advised that the Implementation Procedures were not intended to be directives.

Boardmember Glover acknowledged that this discussion and the potential amendments needed to be done. He congratulated staff on its hard work and recognized the document would be dynamic over time. He otherwise spoke to Item 4 of the Implementation Procedures and commented that the language in Items 4 (c) and (d) appeared to conflict with one another. He also clarified with staff that while Saint Mary's College (SMC) would have a Master Plan with its own regulations, it would also fall under the Design Review Ordinance.

Chair Helber sought a clear process and commented that although a list of exempt items could be clearer, the list should also include replacement of in-kind structures; otherwise it would leave eligibility open for interpretation and grounds for confusion. He found a list of exemptions and projects eligible for Administrative Design Review to be more advantageous.

Ms. Macdonald Powell referenced Page 2 of Attachment A, MMC Chapter 8.72 Design Review, Section 8.72.030, (b), and identified the 17 items called out by name as exempt from design review in Single-Family Districts and suggested the list could be used as a starting point for a list of exemptions in the other districts as well.

Boardmember Glover recommended that the list of 17 items identify which items required compliance with fire codes, particularly Item 3. He cited the Rheem Theatre elevator project, which in his opinion, had involved an incomplete design. In that case, he expressed concern if the Planning Director/Design Review Administrator had determined completeness citing concerns with respect to public and seismic safety.

Ms. Macdonald Powell commented that the Rheem Theatre elevator project was situated within the scenic corridor, which would always require DRB review. Staff was not recommending that policy be changed.

Ms. Brekke-Read described the Rheem Theatre elevator project as a unique situation where the Town Council had waived the processing fees which had also affected staff's ability to spend much time on the project since staff must recover its costs. In that case, a building permit had also been required with another layer of review from the Building Official.

Ms. Macdonald Powell recognized the importance of the Rheem Theatre, which in her opinion should require DRB, not staff review, regardless of whether it was located within the scenic corridor. She noted it may be possible that elevators would not be subject to the ordinance, which could be inserted into the Implementation Procedures if the DRB so directed.

Ms. Brekke-Read noted that there were some projects that had not been specifically listed in the 17 exempt items pursuant to Section 8.72.030 (b), and which staff had found in the daily course of over-the-counter work, projects that should not be subject to any design review; however, the Planning Director did not have the authority to exempt those projects. She asked the DRB to consider adding an exception to state that any other similar type of project in the opinion of the Design Review Administrator would not require design review.

Speaking to Implementation Procedures 4 (a) through (e), Ms. Macdonald Powell commented that those procedures had been captured in the spirit of the list of 17 items exempt from design review, but not as comprehensive as a list of specific projects that would be exempt. She recognized there was some duplication between the language in the ordinance and the Implementation Procedures. As an example, the complete demolition and/or removal of an outdoor feature in a Commercial District should be something that should continue to be reviewed by the DRB.

Ms. Brekke-Read explained that as staff had reported, the Planning Department was embarking on a complete overhaul of the MMC, with the amendment to Chapter 8.72, Design Review, being one piece of that effort. Staff had identified the areas that were ongoing daily issues and what could be fixed to assist in the everyday issues for homeowners and architects. She asked the DRB to consider not fixing all of it at this time but consider the one piece. She affirmed that any changes in the list of 17 items would require final review and approval by the Town Council, which she hoped would consider the amendments by the end of August.

As to the recommendation for the Zoning Administrator/Design Review Administrator to have the authority to request additional materials, Ms. Macdonald Powell noted the list of items as identified on Page 4 of the ordinance was comprehensive on what a site plan and architectural drawings should provide; however, a soils report, as an example, had not been listed and oftentimes should be provided. Additional materials and information that could be required had also been identified on Page 6, and staff was of the opinion it made sense to allow the Zoning Administrator/Design Review Administrator to have the authority to request additional materials.

Boardmember Glover referenced MMC Section 8.72.070 (a), and recommended a new item be added: *Plans with dimensions of all areas other than the building footprint that are not permeable; i.e. driveways and patios, given the limitation on square footages for paved areas that were not permeable.* He also cited Section 8.72.080 (b) and suggested another addition to that section, to read: *Minimizing surface runoff from irrigation and/or storm water is considered in the design.* He emphasized the intent to minimize runoff from a piece of property before the runoff reached the storm drain.

Ms. Clark pointed out that the Town's Design Guidelines included a number of guidelines that addressed storm water issues. Staff had recognized a number of duplications in the standards when applied to a specific application, and she recommended that a general standard regarding environmental quality be considered in addition to all of the other standards.

Boardmember Zhu commented that he had not been able to adequately review all of the information prior to the meeting. He found the effort to represent a good and comprehensive start to address the issues, found it good for the DRB to continue to discuss the item, and encouraged DRB members to provide staff any further comments in writing. He added that he was not ready to take action on the issue at this time given his desire for the opportunity to adequately review all of the materials.

Ms. Macdonald Powell recognized that the item had not been noticed as a public hearing and if the DRB would like the item brought back for further discussion, staff would need to discuss scheduling.

Ms. Brekke-Read explained that she had brought the matter to both the DRB and the Planning Commission on prior occasions to advise of the issues staff was facing with applicants. She restated the issue, the intent of the proposed amendments to the MMC, and the fact there was no mechanism in which she, as the Planning Director or Design Review Administrator, could sign-off on an exemption to allow approval of an application over the counter. She cited numerous situations staff had experienced which had caused confusion and conflict with the regulations of the MMC. Staff was attempting to find a simple fix to allow the Planning Director/Design Review Administrator the ability to exempt items that were not listed in the MMC for single-family dwellings; allow for minor projects in non-Single-Family Districts to be handled through a Design Review Administrator process; and consider adding an exemption for non-Single-Family Zoning Districts. She asked if the DRB would agree to a catch-all phrase in Section 8.72.030 (b) to allow the Design Review Administrator authority to exempt applications that were determined by the Design Review Administrator to be comparable to the types of projects described above.

By consensus, the DRB supported the staff recommended catch-all phrase, particularly to ensure that the 17 items were defined, with all exemptions and DRB administrative actions to be summarized to the DRB in each meeting packet. It was also the consensus of the DRB that staff was heading in the right direction and that staff return with specific language for the proposed catch-all phrase.

Ms. Brekke-Read affirmed the item could be brought back to the DRB prior to final action by the Town Council.

Chair Helber offered a motion to encourage staff to proceed on this effort, as discussed, following the format of MMC Section 8.72 with the addition of Item (f), and prepare information for DRB, Planning Commission, and Town Council consideration. There was no second to the motion. The motion failed.

Ms. Brekke-Read advised that a motion was not required. The consensus was acceptable that staff was heading in the right direction, as discussed.

C. Consider a Recommendation to the Planning Commission to Amend Title 8, Planning and Zoning of the Town of Moraga, to Clarify Section 8.68.060, Lot Size, Yard, and Setback Requirements

Ms. Macdonald Powell identified the potential amendments to MMC Title 8, Planning and Zoning to clarify Section 8.60.060, Lot Size and Setback Requirements; a quick fix to the MMC amendments intended to clarify the MMC, making it easier for applicants to remodel and conduct other improvements in the Town. She read into the record MMC Section 8.68.060, Front and Side Setbacks Established under County Zoning, as written, and as shown on Page 2 of the June 24, 2013 staff report.

Ms. Macdonald Powell noted that this section of the MMC required cross referencing to other sections of the MMC and generally applied to those properties developed prior to the Town of Moraga's incorporation in 1974, which had set up two parallel setback requirements; new construction, and construction prior to the Town's incorporation. She

commented that this section of the MMC used the term "alteration," which was commonly understood to mean remodel without repair or increase in floor area, with MMC Section 8.72.030, Design Review Procedure for Additions or Alterations making a distinction between the term alteration and addition.

Ms. Macdonald Powell explained that currently, planning staff informs potential applicants that they may remodel or repair existing structures that meet the previous County Zoning Ordinance but do not comply with the Town's setbacks. Staff also informs applicants that additions which met the County Zoning Ordinance but do not meet the current Town regulations must go through a variance process before the Planning Commission. This process was frustrating for applicants and was unclear in the MMC. Staff also recognized that different staff in the past had interpreted the language in the MMC differently, creating frustration for applicants. Staff had started to study the issue and had prepared tables comparing the County to the Town's zoning regulations which involved numerous properties in the Town. This issue had been identified by the Town Council and residents as a concern, with staff proposing two different approaches to amend the MMC in order to make the process and intent of the ordinance clear for applicants and staff.

Ms. Macdonald Powell identified the first approach as Option A, allowing residential additions to follow the old County setback standards which meant the Town's zoning setback standards would not apply to additions to structures constructed prior to the Town's incorporation and which would require Administrative Design Review or DRB approval. Option B would allow residential additions to extend and follow existing lines provided the addition would not further encroach into the Town established setback. Option B would require either Administrative Design Review or DRB approval, and the ordinance would limit the scope and/or size of the addition and would require a variance and DRB approval for additions which encroach further into the Town's setbacks than the existing building walls. She noted that staff had provided diagrams to illustrate Options A and B, and Page 6 of the staff report included implementation measures that would apply to Options A and B.

Ms. Macdonald Powell added that staff had also prepared additional information related to lot size, yards, and setback requirements from the communities of Orinda, Lafayette, and Danville, with each neighboring community having drafted regulations to meet its culture, community, and needs. She walked the DRB through the information at this time, and noted that staff had not completed an evaluation of the regulations from the other communities to determine comparability to the Town of Moraga although the information was being gathered.

Ms. Macdonald Powell advised that staff had also received a letter this date from Dave Bruzzone on this agenda item. She provided copies of the letter to the DRB and read the contents of the letter into the record, stating that Mr. Bruzzone had requested the Town confirm the County's setback standards set in 1974 to apply to new development.

Ms. Macdonald Powell stated that during the Planning Commission meeting of June 17, 2013, a number of residents had spoken to the proposed amendment and offered general support for Option B. She outlined the Planning Commission's comments including concerns with second story additions, and continuing an extension of the building walls as a fair and reasonable thing to do for those residential units with

existing foundations and floor plans where it made sense to extend building walls even if they encroached into the Town's required setbacks. The Planning Commission would again discuss the item during a tentatively scheduled public hearing on July 1, 2013.

PUBLIC COMMENTS OPENED

Judy Dinkle, Moraga, stated that she had spoken to the item during the June 17 Planning Commission meeting. She clarified that her comments were related to additions and renovations, and not to new construction on undeveloped property.

PUBLIC COMMENTS CLOSED

Responding to the DRB, and in response to the concerns raised by Mr. Bruzzone, Ms. Clark commented that there would be very few vacant lots in the developments identified by staff that would be primarily affected by the amendment, with many of the lots subdivided and developed in the 1960's and 1970's; few vacant lots remained.

Ms. Brekke-Read added that Mr. Bruzzone owned an entire subdivision of 67 lots in the Country Club which had been subdivided after the Town's incorporation and which would be subject to the Town setback requirements.

As to when the Town's setbacks had been codified, and whether public hearings had been held at that time, Ms. Clark commented that through staff's research, staff had found little, if any, information as to how the decisions had been made on the setbacks in the newly-created Town districts.

Ms. Brekke-Read further commented that there had been a mixture of interpretations of the setback requirements over the years which had caused confusion for staff, architects, and homeowners. The public had also raised concerns with the Town Council as reflected in information included in the DRB packet, and it was clear the language needed to be clearer and more concise. Currently, those applicants desirous to go beyond the Town's setback requirements with an addition would require a variance, and DRB approval would be required; however, she had been asked to change those regulations.

Boardmember Zhu asked for clarification in that as an Architect he understood that setbacks were to be measured from the wall, not from the eave.

Ms. Macdonald Powell explained that the MMC stipulated that the setback be measured to the building wall and that certain architectural features may encroach into the required setback. In 2001, the Town Council set in place an informal policy for design review with the setbacks between the eaves and the property line. During its June 12, 2013 meeting, the Town Council had reconsidered that direction and had retracted the 2001 policy, with the result that setbacks are again measured to the wall, generally speaking.

Boardmember Glover suggested that staff was heading in the right direction and the proposed amendment should be pursued. He agreed there was a need to simplify the process for applicants and staff although he understood that the Zoning Ordinance was

under the purview of the Planning Commission and not the DRB. He found the graphics that had been prepared by staff on the setbacks to be very helpful. He also clarified with staff that setback issues did not always get reviewed by the Moraga-Orinda Fire District (MOFD), other than additions which required sign-off from the MOFD.

Ms. Macdonald Powell noted the Town did not have a definition in the MMC for 'demolition.' The Town followed the Building Department lead but it could mean a home constructed prior to 1974 could be remodeled to a significant extent and follow the County setbacks.

Chair Helber found that the Town setbacks had been created for a purpose, and he suggested the amendment would gut the Town's setback requirements, allowing an exemption from the variance process for an addition. If the majority of the Town wanted to change those requirements, the setback requirements should be changed and not the rules that a particular home constructed under an old code was exempt from a new code. He noted there were existing non-conforming uses and they should be allowed to continue, although expansion of an existing non-conforming use should require a variance. He opposed gutting the Town's setback requirements and recommended a change to the setback for a particular zoning classification.

Boardmember Zhu agreed that if the majority of the Town wanted a change, it should be changed. He found the issue to be beyond the DRB and the Planning Commission level as a much broader issue.

Boardmember Glover restated his comments, and emphasized the need to clarify what existed. He cautioned that the Town could be setting a precedent in terms of existing setbacks, which could create an issue in the future, and expressed concern that if the Town continued to walk what he characterized as a gray line of where the setback line was located it would be a precedent with no setback that would be the minimum for applicants. He understood there would be some exceptions although he suggested that those exceptions be considered on a case-by-case basis.

Ms. Brekke-Read recognized that there were three DRB members present who appeared to be in agreement. She asked the DRB whether it was in agreement that the regulations for front and sideyard setbacks under the County zoning was clear, and clearly supported the majority of the DRB's decision. She cited Section 8.68.060 of the MMC, as shown on Page 2 of the staff report and asked whether that section supported the DRB's position where an application to add onto a home into the Town's setback, even though it complied with the County setback, would require a variance.

Ms. Macdonald Powell clarified that Section 8.04.020 of the MMC, and as referenced in Section 8.68.060, related to definitions in the MMC.

Chair Helber understood that Section 8.68.060 of the MMC, as written, applied to replace in-kind and if one wanted to strengthen a wall, repair but not expand, it would allow an existing non-conforming use to continue. He understood that any expansion would require a variance.

Ms. Dinkle pointed out that Section 8.68.060 of the MMC applied to approximately 80 percent of the residences in the Town of Moraga, and any decision would affect those buildings which had been constructed under a Planned Development (PD) district. She noted the homes could not be moved over since they existed, and the Chair's interpretation of that section of the MMC could have unintended consequences if a homeowner desired to build an addition, or design around a residence. She reiterated her opposition to further restrictions for deeper sideyard setbacks and noted that at any point of the first submittal of an application it could always be recommended for DRB review if something did not work next to a neighboring parcel.

Chair Helber explained that a decision from the DRB would be advisory to the Planning Commission.

Ms. Macdonald Powell clarified that Section 8.68.060 of the MMC had been recommended by staff to be modified to make it clearer and to have a fresh start moving forward in the interpretation of that section. She agreed that section could be interpreted in many ways, and stated that Option B recognized that code section's ambiguous interpretation and allowed some encroachment into the Town's setback regulations for design reasons.

Ms. Clark concurred with staff's comments on the different interpretations of the MMC which had led to frustration, with that section of the MMC having been unclear and requiring clarification for staff and applicants when processing an application. If a project meets the specific criteria, as outlined in the staff report for a modest addition, for a single story that did not encroach further into the required setback, it could be administratively reviewed and any further encroachment would require DRB review. She added that a variance involved a specific approval requiring specific findings that could not be made in every case.

Ms Brekke-Read understood that based on the DRB's comments, the Town's setback space was more generous than the County's which had been purposeful, and either the Town should apply the Town setback requirements or change the zoning district and setback requirements for that entire area, and require a variance any time there was an encroachment into the required setback area. An alternative could be to have an elevated review through the DRB for those additions into the Town's setback area and treat it almost like an exception. She noted that the feedback the DRB had provided could be brought to the Planning Commission on July 1 and again on July 15, which would allow staff time to return to the DRB with specific language, at which time a formal recommendation from the DRB to the Planning Commission could be considered.

Chair Helber reiterated his opinion that the Town's setback requirements were intended to preserve the Town's semi-rural character and had been intentionally created.

Chair Helber did not support a reduction, pointed out there were provisions in the MMC to allow an addition, provisions to identify when and if a variance was required, and he saw no need to change that process at this time.

Boardmember Zhu supported the current standard "as is" as opposed to going back to the older standard. He supported direction that was supported by the majority of the residents of the Town.

Boardmember Glover acknowledged and understood the process for a variance. He also understood that setbacks requirements had been established for a reason, and if modified, should require a variance.

D. May 2, 2013 Minutes and May 13, 2013 Minutes

Chair Helber requested the following revisions to the May 2, 2013 meeting minutes:

To the first sentence of the last paragraph on Page 2:

Boardmember Glover characterized that condition as nonsense given there was an adequate FEMA map with erosion in the lower creek every year.

To the last sentence of the second to last paragraph on Page 2:

It was therefore possible the analysis, as recommended in the conditions of approval, may result in a line being close to the storm drain easement line and in which case the structures would be removed from within an area offered for dedication.

To the last sentence of the first paragraph on Page 4:

He [Mr. Banister] further cited two court cases which had been decided in Contra Costa Superior Court involving the cities of Lafayette and Orinda involving similar issues where drainage easements had been dedicated but not accepted by the public entity.

And to the second to last bullet point as shown on Page 12:

- *Page 8 of 9, Condition to remain as worded, with the addition of a last sentence, the agreement to be approved by the Town Attorney prior to issuance of a building permit; and*

Ms Brekke-Read requested that the minutes of the May 2, 2013 meeting be held over to allow staff to make the changes, and allow staff the opportunity to clarify the accuracy of the last change as recommended by the Chair after review of the meeting tape.

Chair Helber requested the following revisions to the May 13, 2013 meeting minutes:

To the first sentence of the last paragraph of Page 2:

In response to the DRB, Ms. Brekke-Read explained that prior to 2000; staff had measured yard setbacks from the wall or foundation itself pursuant to the Moraga Municipal Code (MMC).

And to Pages 6 and 7, the references to Boardmember Kirkpatrick were to be corrected to read Boardmember Glover.

Boardmember Glover requested an amendment to items (a) and (b) of the bullet point stated by Ms. Brekke-Read, as reflected in the second to last paragraph of Page 7:

- (a) *Geotechnical review for the foundation by a registered Geotech.*
- (b) *Structural design for attachments to the building and the foundation.*

On motion by Boardmember Glover, seconded by Boardmember Zhu to approve the minutes of the May 13, 2013 meeting, as amended. The motion carried by the following vote:

Ayes: Glover, Zhu, Helber
Noes: None
Abstain: None
Absent: Escano-Thompson, Kirkpatrick

VI. REPORTS

A. **Design Review Board**

Boardmember Glover reported that the flags on the Chevron Station had been removed and he expressed his appreciation to staff. He also reported that the fence on the Shell gas station site was half up/down, the fence posts were up which could create a potential safety hazard particularly in the evening, and there was garbage all over the site. He expressed concern with the condition of the property particularly given its location within the scenic corridor.

B. **Staff**

Ms. Brekke-Read reported that the Town was advertising for the position of Associate Planner; the Town Council would consider the 5-Year Capital Improvement Program (CIP) and Budget on June 26, 2013, which would include the funding for the Associate Planner position; and a future meeting of the DRB would include a presentation of some of the projects within the 5-Year CIP.

Boardmember Glover announced that he would be unable to attend the DRB meetings during the month of September.

Ms. Brekke-Read advised that all applicants had been informed that the DRB and the Planning Commission would recess during the month of August. On July 22, 2013, the DRB would be asked to review the updated plans for the SummerHill Homes project. She reported that she would not be present for the July 8, 2013 DRB meeting and Ms. Macdonald Powell would be the staff person for that meeting.

In addition, Ms. Brekke-Read reported that she had been asked to transition some of the meetings away from her responsibility and attendance and she would not be attending all DRB meetings; Ms. Macdonald Powell and/or Ms. Clark would be the staff in attendance.

Ms. Macdonald Powell reported that the Planning Department had signed off on the building permit for Saint Mary's College (SMC) Alioto Recreation Center, the north parking lot permit was issued this date, and the recreation facility permit would be issued by the end of the week.

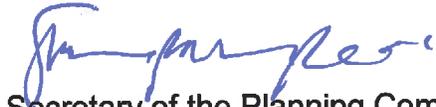
Ms. Brekke-Read also reported that the Kick-Off meeting for the Livable Moraga Road Project had been held this date. Staff planned to ask the DRB to select a member for the Technical Advisory Committee (TAC) during the July 22, 2013 DRB meeting.

The DRB welcomed Ms. Macdonald Powell to the Town of Moraga.

VII. ADJOURNMENT

On motion by Boardmember Glover, seconded by Boardmember Zhu to adjourn the meeting at approximately P.M.

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Secretary of the Planning Commission