

COMMUNITY DEVELOPMENT AGENCY  
**PLANNING DIVISION**

Brian C. Crawford  
DIRECTOR

December 10, 2013

Thomas Lai  
ASSISTANT DIRECTOR

Marin County Board of Supervisors  
3501 Civic Center Drive  
San Rafael, CA 94903

Marin County Civic Center  
3501 Civic Center Drive  
Suite 308  
San Rafael, CA 94903  
415 473 6269 T  
415 473 7880 F  
415 473 2255 TTY  
[www.marincounty.org/plan](http://www.marincounty.org/plan)

**SUBJECT: Cotton Appeal of Planning Commission's Determination**  
573 Kernberry Drive, San Rafael  
Assessor's Parcel 164-094-14

Dear Board Members,

**RECOMMENDATION:**

Review the administrative record, conduct a public hearing, and adopt resolution denying the appeal.

**SUMMARY:**

On October 14, 2013, the Planning Commission voted (4-2) to deny the applicant's appeal of the Director's determination that an interpretation of the Development Code is unnecessary to ascertain the requirements for allowing additions to a residence that maintains a legal, non-conforming side yard setback. Staff recommends that your Board affirm the Planning Commission's determination and deny the appeal.

The Development Code contains a procedure allowing the Director to determine the meaning or applicability of any of the Development Code's requirements in response to a written request. The interpretations are typically issued when the staff determines that the meaning or applicability of a code requirement benefits from interpretation generally or as applied to a specific case.

Phillip Cotton, trustee for property owner, Five-Seventy-Three Kernberry Drive Land Trust, submitted a request to the Community Development Director for an interpretation of the Development Code to allow additions to an existing residence to maintain the existing 5-foot, 10-inch setback from the easterly side property line as the existing residence. In effect, Mr. Cotton is requesting the County to approve a two-inch encroachment into the required six-foot setback that applies to the subject property and other lots in the neighborhood without a Variance as mandated by longstanding procedures in the Development Code.

The property is located in one of the early subdivisions in the Marinwood community. The building permit for the construction of the residence was issued on April 12, 1957. Planning Division records showed that the residence was approved with a six-foot setback from the easterly side property line, where six feet was required under

the PC (Planned Community) zoning at that time. The property was rezoned in 1958 to the current R-1, Single-family Residential, zoning district in 1958, but the six-foot side yard setback requirement was not changed.

On January 4, 2012, a building permit was submitted for remodel and construction of additions totaling 754 square feet to the existing, approximately 1,700 square foot residence. Part of the work includes the construction of a second story addition above the existing garage that adjoins the easterly side property line. According to standard County procedures, the building permit was issued on August 23, 2012 with a condition that the 6-foot side yard setback be verified prior to approval of foundation inspections to confirm that the addition meets the required setback. This condition was communicated to Mr. Cotton in writing before construction commenced. In December 2012, staff was informed that a survey found that the existing residence maintains a 5-foot, 9-inch setback from the easterly side property line. *(Note: A copy of the surveyor's letter provided by the applicant prior to the Board's appeal hearing indicated that a measurement of the existing home's setback on December 6, 2012 indicates a side yard setback of 5-feet, 10-inches. Although the applicant has referred to the existing setback as 5-feet, 9-inches, staff is using the corrected setback of 5-feet, 10-inches in this report and resolution.)*

#### *Analysis*

Marin County Code Chapter 22.02 establishes the requirements for resolving questions about the meaning or applicability of any part of the Development Code in order to ensure the consistent interpretation and application of the Development Code.

The following provisions from the Development Code adequately and clearly state the requirements for how a setback is determined and how the development standards apply to additions to existing structures with nonconforming setbacks.

- Development Code Section 22.130.030 (Definitions) defines a setback as "the distance by which a structure is required to be separated from a lot line, measured perpendicular to the lot line." Section 22.20.090.B.2 expands the definition by describing the method for measuring a side yard setback as: "the side yard setback shall be measured at right angles from the nearest point on the side property line of the lot to the nearest point of the wall of the structure; establishing a setback line parallel to the side property line, which extends between the front and rear yards."
- Development Code Section 22.112.020.C states: "Additions to a nonconforming structure may be made as long as the additions are in conformance with this Development Code."

#### *Conclusion*

In its decision on the appeal, the Planning Commission concurred with the Director's determination that an interpretation of the Development Code is unnecessary. The Development Code is clear that additions to a nonconforming building cannot continue the nonconformity. The method for measuring a side yard setback is also clearly described in the Development Code. The Development Code does not provide a margin of error with respect to compliance with property line setbacks in

the R-1 zoning district and other conventional zoning districts. Consequently, there is no basis, nor reason, for an interpretation to be issued to allow a minimum setback to be reduced. The applicant has the ability to seek relief from the strict application of the Development Code, either by filing a Variance, or seeking a Lot Line Adjustment with the adjoining neighbor. The applicant may also revise the design of the addition so that it meets the required setback. Staff has suggested against a Variance as a means of resolving the setback encroachment since the property does not have a unique or unusual configuration, width, or size relative to other R-1 zoned properties in the neighborhood such that application of the six-foot required setback would deny the owner of privileges enjoyed by other property owners with identical zoning in the neighborhood.

**REVIEWED BY: (These boxes must be checked)**

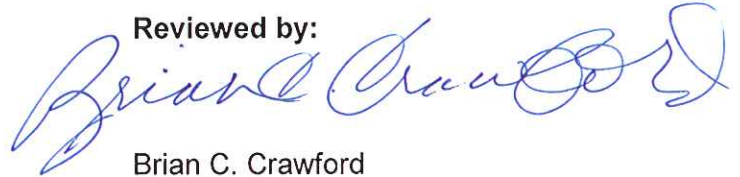
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<input type="checkbox"/> Human Resources	<input checked="" type="checkbox"/> N/A

**SIGNATURE:**



Thomas Lai  
Assistant Director

**Reviewed by:**



Brian C. Crawford  
Director

- Attachments: (1) Resolution Denying the Cotton Appeal  
 (2) Petition for Appeal, received 10/21/13  
 (3) DJ Scranton Surveying Letter, (12/6/12)  
 (4) Planning Commission Resolution PC13-012 and Minutes  
 (5) Staff Report to the Planning Commission, (10/14/13)