



COUNTY OF MENDOCINO
DEPARTMENT OF PLANNING AND BUILDING SERVICES
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MEMORANDUM

DATE: JULY 14, 2020

TO: HONORABLE BOARD OF SUPERVISORS

FROM: JULIA ACKER KROG, CHIEF PLANNER, PLANNING AND BUILDING SERVICES

SUBJECT: APPEAL OF MHRB PERMIT 2016-0018 REGARDING CONDITIONS OF APPROVAL

On February 6, 2020 the Applicant/Owner filed an appeal of the approved MHRB Permit 2016-0018, which authorized the demolition, reconstruction, and/or construction of the Ferro House, garage, tower, fencing, driveway and other structures (see Exhibit 1). The approved permit allows for a variety of site improvements to existing structures, as detailed below. The project site is located at 45270 Albion Street, Mendocino (APN: 119-217-06). The Mendocino Town Plan Appendix 1 lists the site, known as the Ferro House, as a Category IIa Historic Resource. The applicant provided a statement as to what the full permit request entails with the application, as detailed below. Staff has modified the applicant's statement based upon the Revised Plans dated December 4, 2019. Changes are shown by ~~strike through~~ and underline.

Site:

1. *Remove Brick Patio*
2. ~~Repair and Expand~~ Replace Concrete Patio with wood decking
3. *Terrace Garden*

House:

1. *Pour concrete footing around entire footprint*
2. *Replace all rotten or damaged framing material*
3. *Frame new roof w/dormers as shown on elevations*
4. *Replace all windows with wood windows dual pane glass*
5. *Replace doors with fiberglass units painted*
6. *Sheath and shingle all walls with cedar shakes and oiled finish to help preserve material*

Tower:

1. *Replace existing tower in a revised location with code compliant water tower as shown on the site plan and in elevation drawings.*

Garage:

1. *Repair and replace all damaged or rotten material*
2. *Excavate for more interior head clearance*
3. *Pour concrete floor and stem walls*
4. *Replace plastic window with wood and glass units as shown*
5. *Replace plywood doors with carriage barn style doors*
6. *Add fully shielded downlights at all exterior doors*
7. *There will be some plumbing vents which will be painted black and located on the north side of the roof*
8. *There will also be copper screened crawl space vents located in the stemwall below the floor level*

CHRONOLOGY AND MENDOCINO HISTORICAL REVIEW BOARD (MHRB) ACTION:

The subject permit was submitted on June 15, 2016 and through a series of back and forth on the completeness of the application with previous staff members assigned to the project, the project did not proceed to a MHRB hearing until August 6, 2018 where it was continued to a future meeting with direction

to the Applicant to prepare revisions to the project. A slightly modified project to that originally submitted in 2016 was heard by MHRB on July 1, 2019 where the matter was continued to October 7, 2019 and continued again to December 2, 2019. The applicant submitted revised drawings on December 4, 2019 and final approval was given to that proposal at the February 3, 2020 MHRB meeting with Conditions of Approval that were modified at the hearing.

As is detailed in the three staff reports and various memorandums prepared for this project (see Exhibits 2 through 6), the existing residence does not conform to required yard setbacks for the zoning district and its construction predates current setback requirements. The existing residence is therefore considered to be a legal non-conforming structure. The application proposed that the existing residence would be repaired/replaced salvaging 50 percent of the existing structure. Throughout the various hearings on the application the MHRB questioned whether the existing residence was salvageable to be considered less than 50 percent repair or replacement. Initially, Staff found this concern to not be applicable due to the filing date of the application and the Code in effect in 2016, as detailed in the next paragraph.

In the 2018 and 2019 MHRB hearings, Staff reviewed the project for consistency with Section 20.716.010 of Mendocino County Code in effect at the time the application was submitted in 2016. Mendocino County Ordinance No. 4395, which amended Division III of Title 20 of Mendocino County Code, was not yet adopted and the code in effect in 2016 contained language which allowed complete replacement of a legal non-conforming structure in the same footprint. The amended code (Ordinance No. 4395) adopted on November 17, 2017 modified Section 20.716.010 to now require that "replacement of 50 percent or more of the nonconforming structure is not repair and maintenance but instead constitutes a replacement structure that must be brought into conformance with the policies and standards of the LCP." At the meeting of the MHRB on July 1, 2019 the MHRB requested that Staff consult with County Counsel on which Code the application was subject to. Upon consultation with County Counsel it was determined that the application was subject to the amended code adopted in 2017. As such, the determination of whether 50 percent of the structure would be repaired/replaced became an important issue with the application because it would determine if the non-conforming setback of the existing residence could be retained. At the February 3, 2020 MHRB hearing, Staff presented several options for consideration of the MHRB to address this issue:

Option 1: The MHRB could approve a variance to allow the existing setbacks to remain even if repair/replacement exceeds fifty (50) percent or more pursuant to Section 20.724.010(A) of Mendocino County Code.

Option 2: The MHRB could add a condition which would state "If repair and replacement of the structure exceeds fifty (50) percent the applicant shall return to MHRB for a modification to the permit to abide by zoning code regulations pertaining to setbacks of the structure from property lines."

Option 1 failed for lack of a majority and after extensive discussion, the MHRB ultimately approved the project with the inclusion of a Condition of Approval (Condition 29) as presented in Option 2 with slightly modified language (see Exhibit 9 for a copy of Permit and all Conditions).

APPEAL:

The Applicant, in their appeal, states that their architect believes more than fifty (50) percent of the existing residence will need to be repaired/replaced therefore necessitating under the current approved permit that a revised proposal return to the MHRB demonstrating conformity with the zoning district standards for yard setbacks. The Applicant, in their appeal, requests that the Board of Supervisors overturn the decision of the MHRB and grant a variance to yard setbacks pursuant to Section 20.724.010(A) of Mendocino County Code, as provided in Option 1 presented to the MHRB on February 3, 2020.

EXHIBITS:

1. Appeal filed February 6, 2020 with Attachments
2. August 6, 2018 Staff Report

3. July 1, 2019 Staff Report and Memorandums
4. October 7, 2019 Memorandum
5. December 2, 2019 Memorandum
6. February 3, 2020 Staff Report and Memorandum
7. July 1, 2019 Adopted minutes
8. October 7, 2019 Adopted minutes
9. MHRB_2016-0018 Permit
10. Public Comments 2018 through 2020