



AGENDA NO: B-1

MEETING DATE: December 07, 2021

**AGENDA CORRESPONDENCE RECEIVED BY THE
PLANNING COMMISSION FOLLOWING POSTING OF
THE AGENDA IS ATTACHED FOR PUBLIC REVIEW
PRIOR TO THE MEETING**

From: Ryan [REDACTED]
Sent: Monday, December 06, 2021 8:23 AM
To: PlanningCommission <PlanningCommission@morrobayca.gov>
Cc: CityClerk <Cityclerk@morrobayca.gov>; Scott Collins <scollins@morrobayca.gov>; Scot Graham <sgraham@morrobayca.gov>; Council <council@morrobayca.gov>
Subject: Re: Agenda item B-1 Morro bay Zoning Code Update.

12/5/2021

Please include as correspondence for Planning Commission meeting on 12/7/2021.

Dear Morro Bay Planning Commission,

As many of you may be aware, I have been trying to have the City address a non-conforming accessory structure that was built in June of this year approximately 1 inch from my property line and less than 6 feet from the main structure on my property.

I would like to thank the City Manager for taking the time to come see the structure in person and for his thoughtful reply which I have attached below for your review (in red font).

I particularly felt that his description of the structure as “**spilling into**” my property as being very accurate. He also addressed my concern from a fire safety perspective. Although, in this regard I found his comments contradictory to existing zoning code. In particular, he states that “There is no such restriction on accessory structures, in terms of proximity to an adjacent property, in the building or fire codes”. In fact, the current existing code states under section **17.48.040 - Accessory buildings:**

B. “...an accessory building in an R district shall meet the setback, height and coverage requirements of the zone and be at least six feet from any dwelling existing or under construction on the same lot or any adjacent lot...”

In addition to this apparent conflict, the city Fire Marshal informed me that he and others at the fire department were opposed to changes in the zoning code update that allows for such structures but were overruled in the decision.

I have found that residents and homeowners of Morro Bay are unaware that the new proposed zoning ordinance, if adopted in its current state, will allow for such structures throughout Morro Bay. The topic of inclusion and equity has been discussed by the members of this panel very recently, yet it seems contradictory to make such a drastic change to code without consideration of what the community wants and the impacts it will have.

It is my understanding that the city is trying to make this change primarily because of the problems that have arisen in North Morro Bay due to small lot size and overall high density. This has left residents without a means for adequate storage. Having lived in North Morro Bay personally for more than 10 years I can understand the problems that such high-density housing can create firsthand.

These problems do not necessarily affect most other sections of Morro Bay because better planning was utilized in the design and layout of the city in these areas, these basic design elements include larger lots and wider streets.

One of the stated purposes for the zoning code update is to “**promote high quality design.**” I would argue that the allowance for such encroachments to property lines does not in any way promote high quality design. Despite this, I could see making some allowance in North Morro Bay to compensate for small lot size. Historically, North Morro Bay has had zoning code unique to that specific area of town to address the shortcomings of the original planning.

There have been many years of precedent for 3-foot setbacks at lateral lot lines in most parts of Morro Bay. They were created for a reason and should not be done away with without full consideration of the impact it will create. One of the problems that other cities face, is that these accessory structures subsequently become living spaces that are rented out and inhabited. I run a small business in town and have employees that rent homes and apartments in Morro Bay. It is a constant concern that my employees struggle to find affordable living arrangements. Yet, I do not see these types of structures as the answer to the cities lack of affordable housing.

I request that the planning commission please reconsider the allowance for the encroachment of accessory structures to lateral lot lines throughout the city as being proposed the draft zoning code update. Perhaps an exception could be made for lots less than 2500 square feet (which includes most of North Morro Bay) but not for larger lots. If the concern is that residents need additional storage space, do they really need 120 square feet of storage space without a setback from the lot line? On a 2500 sq ft lot this is nearly 5% of additional lot coverage, yet it is not included in the calculation for lot coverage. Can basic design requirements be established that prohibit such structures blocking or partially blocking existing windows of the main structure on which they are built? Additionally, can specific language for design requirements that address water run off be included in the zoning code update?

Making the zoning code “one-size-fits-all” for the entire city would be wrecking ball on the current state of the city, creating haphazard buildings and inconsistent feel to the city as a whole. It is evident that varying lot sizes throughout the city demand various exceptions in city code. This is clear and makes sense. However, those exceptions do not exist throughout the city, and in particular, in the neighborhood in which I reside.

Thank you for your consideration.

Kindest regards,

Dr. Ryan Garcia

Reply from City Manager Scott Collins dated 11/30/2021:

Hi Ryan,

Thank you for your patience on this response to your inquiry, and I also hope you had a nice holiday.

I appreciate you sharing the information during our discussion. I also reviewed emails between you and Scot Graham, and had a couple follow-up discussions with him. That was all helpful in me coming to some conclusions on the matter. I understand the frustration you experienced in having a new structure emerge overnight right next to your property (and seemingly spilling into your property) without warning and without consideration of impacts to you (such as the drainage issue). And the further frustration of learning it was built prior to the change taking place in the zoning code. Ideally, this

situation would not have arisen, and the shed would not have been placed in that location near your home until after the zoning code was reviewed and approved. But of course reality is a bit different.

Zoning Code

So we must look at this from the big picture. Ultimately, the City is pursuing this change in zoning code language because a need emerged in our community over the past several years regarding accessory structures (like sheds) on small lots (of which we have a lot in Morro Bay). That need is the basis for the change in the zoning code. And, yes, Scot did further amend the draft ordinance following his discussion with you. You rightfully pointed out the inconsistencies in the language regarding setbacks. Those inconsistencies were supposed to be addressed through the draft, and we missed it, and we appreciate you pointing them out.

Ultimately, timing becomes the issue. In this case the fact that we are including this new allowance in the zoning code, a code that will be complete within the year, we felt it was justified to allow this use on your neighbor's property.

Safety – Fire and Building Codes

Beyond the zoning code timing issue, I was also concerned about potential safety issues for your home. There is no such restriction on accessory structures, in terms of proximity to an adjacent property, in the building or fire codes, so from that vantage point is not considered a safety threat. Building and fire codes are established by the State of California for public health and safety issues.

Opportunities for Change

Of course I can see why you'd disagree with that finding. That is totally understandable. I suggest you share your concerns with the Planning Commission on 12/7 during their discussion of the draft zoning code. One potential suggestion they could consider is exempting larger properties from the temporary structure issue (in other words, only smaller lots would be eligible for accessory structures in close proximity to a neighboring structure/property line).

Further, we are following up with your neighbor regarding the drainage issue. Should they fail to address that, they will face enforcement action which could be grounds for removal of the accessory structure.

Thank you again for making time for me to speak with you, and for your patience in receiving this response. Please do not hesitate to contact me should you have further questions.

Sincerely,

Scott Collins
City Manager
City of Morro Bay
805-772-6206

CATHY • NOVAK

consulting

December 2, 2021

Ms. Cindy Jacinth
City of Morro Bay Community Development Department
955 Shasta Street
Morro Bay, CA 93442

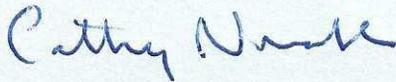
RE: Zoning Ordinance comments for Planning Commission

Dear Cindy,

Attached please find my comments to the draft Zoning Ordinance section 17.14.080 Environmentally Sensitive Habitat as it relates to eelgrass.

Thank you for your time and consideration in this matter. Please let me know if you have any questions.

Sincerely,



Cathy Novak

GOVERNMENTAL & COMMUNITY RELATIONS • PLANNING

Comments for ESHA section:

17.14.080 Environmentally Sensitive Habitat

H. Mitigation and Monitoring.

e. Additional Components for Open Coastal Waters, Wetlands, Estuaries, and Streams.

i. Wildlife Contingency Plan. A Marine Wildlife Contingency Plan (Plan) shall be developed and approved by the Community Development Director prior to the initiation of any pile driving activities. That plan shall describe specific methods that will be used to reduce pile-driving noise and comply with the standards of this Section. Power to the pile driver shall be ramped up to allow marine wildlife to detect a lower sound level and depart the area before full-power noise levels are produced. The Plan shall identify a US Fish & Wildlife Service (USFWS)-approved biologist to monitor all construction within the water-lease area who shall be retained by the applicant. The Plan shall describe on-site marine wildlife monitoring and reporting requirements, as well as identify specific conditions when the biological monitor shall be allowed to stop work, such as observance of a marine mammal within 100 feet of the project area. The biologist shall be responsible to monitor for compliance with all environmental mitigation measures, and regulatory permit conditions (as applicable). The approved biological monitor shall be present onsite during construction and shall have the authority to stop construction if any individuals of southern sea otter are seen within 100 feet of the project area. Construction will be allowed to resume after sighted otters have left the 100-foot radius of the project area. The species shall not be disturbed or forced from the project site by equipment, noise, or other disruptive activity. The monitor will have discretionary authority to temporarily halt the Project if it is determined any otter, or other marine mammal, could be affected by the Project, even if the animal is beyond the 100-foot boundary. All construction crew employees shall be informed on the requirements of this condition.

First, unfortunately no one seems to understand that you cannot ramp up a vibratory hammer. The section should be changed to (or something similar): Power to the pile driver, with appropriate type of equipment, shall be ramped up to allow marine wildlife to detect a lower sound level and depart the area before full-power noise levels are produced.

Second, "to monitor all construction within the water-lease area who shall be retained by the applicant." It is not necessary to monitor "all construction with the water lease area. The monitoring should be done for noise generating construction, i.e. pile driving. If you add "all construction" then technically someone installing a railing around the Harborwalk would require marine mammal monitoring.

Third, “Construction will be allowed to resume after sighted otters have left the 100-foot radius of the project area.” This should be changed to something like: “Construction will be allowed to resume after sighted otters have left the 100-foot radius, or deemed not in distress by the project biologist, of the project area.” In some cases we see marine mammals basically hanging around during work and they are not bothered so the biologist would have the capabilities to allow work to continue if they determine the mammal is not in a distressed state. They are just wanting a free lunch so they will hang around to see if food is dislodged so they can get it.

iii. Pre- and Post-construction Surveys. A survey identifying areas of eelgrass within the lease areas shall be completed within 60 days before start of construction and prior to issuance of a building permit. The survey shall be submitted to the Community Development Director for review as part of the final plans. If additional eelgrass is identified that would be directly shaded by the proposed project, then the report shall identify remedial measures to offset such reduction within the eelgrass beds at a ratio of 1.2:1 in line with the specifications for mitigation of eelgrass habitat as provided for in the California Eelgrass Mitigation Policy. A post construction survey identifying areas of eelgrass shall be completed within 30 days and the report due within 90 days after completion of construction. Any change in eelgrass extent shall be documented and reported to the Community Development Director. If the report identifies a reduction in eelgrass coverage then a plan shall be prepared to identify the appropriate mitigations necessary and in line with the specifications for mitigation of eelgrass habitat as provided for in the California Eelgrass Mitigation Policy, dated October 2014. There is no allowance for a planning eelgrass survey that shows no eelgrass but still requires pre & post construction surveys. The language we have using in permits lately is the following and this is what we should have:

Eelgrass- Applicant shall be subject to the California Eelgrass Mitigation Policy (CEMP) which requires a pre-construction survey shall be completed within 30-60 days prior to issuance of a building permit **unless otherwise waived under the Army Corps permitting requirements.** Post-construction survey, if required by the CEMP, shall be completed within 30 days of construction completion or as otherwise determined by the National Marine Fisheries Service (NMFS) in order to determine amount of impact if any and CEMP-required annual reporting and mitigations. Any change in eelgrass extent shall be documented and reported to the Community Development Director. If the report identifies a reduction in eelgrass coverage then a plan shall be prepared to identify the appropriate mitigations necessary and in line with the specifications for mitigation of eelgrass habitat as provided for in the California Eelgrass Mitigation Policy, dated October 2014.

The federal permits and policies (CEMP) include the appropriate mitigation measures and any determinations should be left to consistency with the federal

permits. We should not set specific ratios and standards that may be otherwise be modified under the Army Corps permitting processes.