

**COUNTY OF SAN LUIS OBISPO BOARD OF SUPERVISORS
AGENDA ITEM TRANSMITTAL**

(1) DEPARTMENT Planning and Building		(2) MEETING DATE July 25, 2006		(3) CONTACT/PHONE Elizabeth Kavanaugh, Current Planning (805) 788-2010	
(4) SUBJECT A hearing to consider an appeal by Nathan and April Vasquez of a denial of a curb, gutter and sidewalk waiver request (DRC 2005-00192), Supervisorial District #1.					
(5) SUMMARY OF REQUEST An appeal request by the applicant of the Planning Director and Public Works Director's decision to not approve a Curb, Gutter and Sidewalk Waiver request that would waive the requirements of the Land Use Ordinance for curb, gutter and sidewalk improvements with a construction permit (PMT 2004-00067). The property is located at 1343 L Street, in the community of San Miguel, in the Residential Single Family land use category.					
(6) RECOMMENDED ACTION Adopt the resolution affirming the decision of the Planning Director and Public Works Director and disapproving the application of Nathan and April Vasquez for a waiver of curb, gutter and sidewalk improvements for DRC2005-00192.					
(7) FUNDING SOURCE(S) Appeal Fee		(8) CURRENT YEAR COST N/A		(9) ANNUAL COST N/A	
(10) BUDGETED? <input type="checkbox"/> No <input type="checkbox"/> Yes <input checked="" type="checkbox"/> N/A					
(11) OTHER AGENCY/ADVISORY GROUP INVOLVEMENT (LIST): County Counsel, Public Works Department					
(12) WILL REQUEST REQUIRE ADDITIONAL STAFF? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes, How Many? _____ <input type="checkbox"/> Permanent _____ <input type="checkbox"/> Limited Term _____ <input type="checkbox"/> Contract _____ <input type="checkbox"/> Temporary Help _____					
(13) SUPERVISOR DISTRICT(S) <input checked="" type="checkbox"/> 1st, <input type="checkbox"/> 2nd, <input type="checkbox"/> 3rd, <input type="checkbox"/> 4th, <input type="checkbox"/> 5th, <input type="checkbox"/> All			(14) LOCATION MAP <input checked="" type="checkbox"/> Attached <input type="checkbox"/> N/A		(15) Maddy Act Appointments Signed-off by Clerk of the Board
(16) AGENDA PLACEMENT <input type="checkbox"/> Consent <input checked="" type="checkbox"/> Hearing (Time Est. 30 minutes) <input type="checkbox"/> Presentation <input type="checkbox"/> Board Business (Time Est. _____)			(17) EXECUTED DOCUMENTS <input checked="" type="checkbox"/> Resolutions (Orig + 4 copies) <input type="checkbox"/> Contracts (Orig + 4 copies) <input type="checkbox"/> Ordinances (Orig + 4 copies) <input type="checkbox"/> N/A		
(18) NEED EXTRA EXECUTED COPIES? <input type="checkbox"/> Number: _____ <input type="checkbox"/> Attached <input checked="" type="checkbox"/> N/A			(19) APPROPRIATION TRANSFER REQUIRED? <input type="checkbox"/> Submitted <input type="checkbox"/> 4/5th's Vote Required <input checked="" type="checkbox"/> N/A		
(20) OUTLINE AGREEMENT REQUISITION NUMBER (OAR) _____			(21) W-9 <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes		(22) Agenda Item History <input checked="" type="checkbox"/> N/A Date _____
(23) ADMINISTRATIVE OFFICE REVIEW					

7-25-06

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SAN LUIS OBISPO COUNTY
DEPARTMENT OF PLANNING AND BUILDING

VICTOR HOLANDA, AICP
DIRECTOR

DATE: JULY 25, 2006

TO: BOARD OF SUPERVISORS

FROM: ELIZABETH KAVANAUGH, CURRENT PLANNING DIVISION

VIA: WARREN HOAG, DIVISION MANAGER, CURRENT PLANNING *WH*

SUBJECT: A HEARING TO CONSIDER AN APPEAL BY NATHAN AND APRIL VASQUEZ OF A DENIAL OF A CURB, GUTTER AND SIDEWALK WAIVER REQUEST (DRC2005-00192), SUPERVISORIAL DISTRICT #1.

RECOMMENDATION

Adopt the resolution affirming the decision of the Planning Director and Public Works Director and disapproving the application of Nathan and April Vasquez for a waiver of curb, gutter and sidewalk improvements for DRC2005-00192.

DISCUSSION

Section 22.54.030 (the Curb, Gutter and Sidewalk section) of the Land Use Ordinance requires curb, gutter and sidewalk to be installed for properties within in new residential subdivisions, in Residential Multi-Family, Commercial, Office and Professional and in the Industrial land use categories within an Urban Reserve Line. Section 22.54.030 of the Land Use Ordinance does not require curb, gutter and sidewalk in the Residential Single Family land use category. This project is located in the Residential Single Family land use category.

However the Section 22.104.070 of the Land Use Category for San Miguel urban areas and the San Miguel Design Plan (adopted on April 2003) sets forth standards for installation of curb, gutter and sidewalk in the Residential Single Family land use category when new construction exceeds 25 percent of the total value of all improvements on the site. The applicant has constructed a new single-family house that increased the total value of improvements on site by more than 25 percent.

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This requirement was put in place, because community members felt strongly that curb, gutter and sidewalk was an important part of enhancing the community. This is reflected by a goal listed in the San Miguel Community Design Plan; "To improve the communities' ability to attract commercial development and housing for all income levels". This goal continues as follows: "In order to provide an appropriate context for new development the visual impression created by the condition of private property and by the streetscape are equally important components of San Miguel's image". Requiring curb, gutter and sidewalks in Residential Single-Family land use category is one of the main tools the design plan uses to create the desired streetscape. The San Miguel Design Plan reflects this communities desire to polish the image of the community.

The San Miguel Community Design Plan goes one step further by detailing residential street cross sections for the type of streets the community would like to see. They include curb, gutter and sidewalk. Curb, gutter and sidewalks are so important; the San Miguel Design Plan mandates curb, gutter and sidewalk for new construction in the Residential Single Family land use category, even though the Land Use Ordinance would not otherwise require it. The applicant was issued a permit on September 2, 2005 and has constructed a new house in the Residential Single Family land use category.

Requests for exceptions or waivers of the requirements for curb, gutters and sidewalks are allowed by Section 22.54.030(D) of the Land Use Ordinance and may be granted if the site meets any of the following criteria: incompatible grade, incompatible development, or premature development.

The application for Land Use Permit DRC2005-00192 to waive the requirements for curb, gutter and sidewalk was received on April 7, 2006. In the waiver request the applicant raises two main issues: 1) incompatible grade and 2) timing.

1. Grade. The applicant's appeal letter states curb, gutter and sidewalk would require retaining the neighbors dirt on their slopes and relocating two meters placed where the sidewalk improvements would go.

The Public Works Department recommended denial of the request due to the determination that the site's slope, which is approximately 15 to 20 percent, could accommodate the required curb, gutter and sidewalk improvements.

2. Timing. The applicant's appeal letter points out that County staff raised the requirement for curb, gutter and sidewalk improvements after construction permits were issued and site improvements were already in place.

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As noted above, the requirement for curb, gutter and sidewalk improvements on this site is not a function of the main section of the Land Use Ordinance, which is responsible for the vast majority of these improvements countywide. When the additional requirement for these improvements was adopted as a function of the Design Plan, it was unfortunately overlooked during the routine processing of this building permit application. When other permit applications were processed on this same street, the "new" requirement was applied, which brought the subject project to staff's attention. Although it is unfortunate that the requirement was raised late in the processing of this permit, staff did not feel that it would be reasonable to require the improvements of other permit applicants on the same street and not of this applicant. We are concerned about the eventual scenario where this lot ends up being the "gap" as sidewalk improvements are constructed with other permits in the future.

OTHER AGENCY INVOLVEMENT/IMPACT

The Public Works Department reviewed the curb, gutter and sidewalk request. County Counsel reviewed the proposed resolution as to form and legal effect.

FINANCIAL CONSIDERATIONS

A \$60.00 appeal fee was paid.

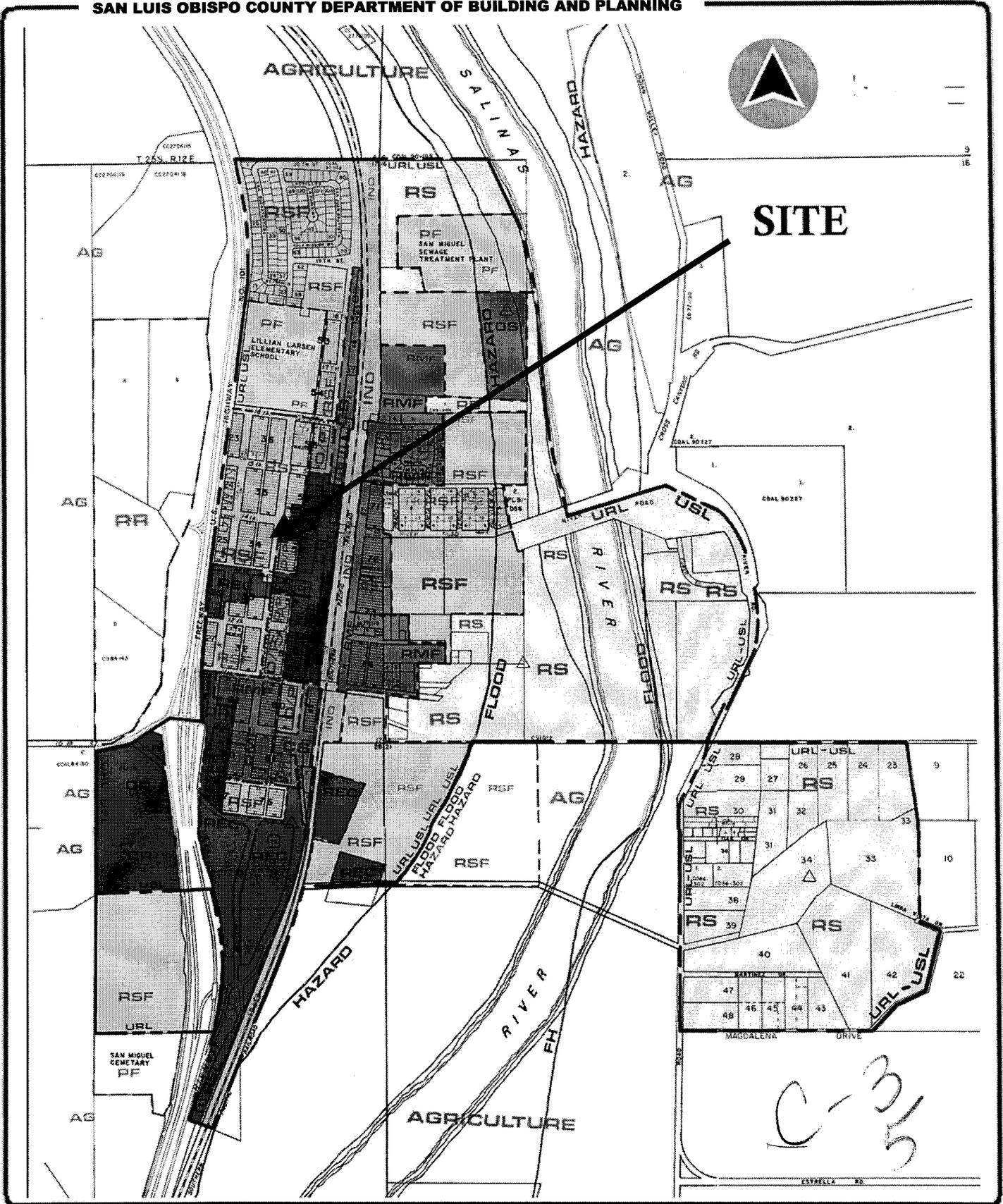
RESULTS

Upholding the appeal would allow a waiver of the requirement for installation of curb, gutter and sidewalk along the street frontage located at 1343 L Street, San Miguel as part of Construction Permit PMT2004-00670. Denying the appeal will result in the requirement for curb, gutter and sidewalk to be installed along the street frontage of the property located at 1343 L Street, San Miguel in accordance with applicable sections of the Land Use Ordinance and the San Miguel Community Design Plan. .

ATTACHMENTS

1. Map
2. Resolution with Exhibit "A" Findings
3. Appeal application
4. Public Work's response

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SITE

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PROJECT
 Vasquez curb, gutter and sidewalk
 waiver
 DRC 2005-00192



EXHIBIT
 VICINITY MAP

IN THE BOARD OF SUPERVISORS
COUNTY OF SAN LUIS OBISPO, STATE OF CALIFORNIA

_____ day _____, 20__

PRESENT: Supervisors

ABSENT:

RESOLUTION NO. _____

RESOLUTION AFFIRMING THE DECISION OF THE PLANNING DIRECTOR AND
PUBLIC WORKS DIRECTOR AND DISAPPROVING THE APPLICATION OF NATHAN
AND APRIL VASQUEZ FOR A WAIVER OF CURB, GUTTER AND SIDEWALK
IMPROVEMENTS FOR DRC2005-00192.

The following resolution is now offered and read:

WHEREAS, on July 25, 2006, the Planning Director and Public Works Director of the County of San Luis Obispo duly considered and denied the application of Nathan and April Vasquez for a waiver of curb, gutter and sidewalk improvements for DRC2005-00192; and

WHEREAS, Nathan and April Vasquez has appealed the Planning Director and Public Works Director decision to the Board of Supervisors of the County of San Luis Obispo (hereinafter referred to as the "Board of Supervisors") pursuant to the applicable provisions of Title 22 of the San Luis Obispo County Code; and

WHEREAS, a public hearing was duly noticed and conducted by the Board of Supervisors on July 25, 2006, and determined and decision was made on July 25, 2006; and

WHEREAS, at said hearing, the Board of Supervisors heard and received all oral and written protests, objections, and evidence, which were made, presented, or filed, and all persons present were given the opportunity to hear and be heard in respect to any matter relating to said appeal; and

WHEREAS, the Board of Supervisors has duly considered the appeal and finds that the appeal should be denied and the decision of the Planning Director and Public Works Director should be affirmed subject to the findings set forth below.

NOW, THEREFORE, BE IT RESOLVED AND ORDERED by the Board of Supervisors of the County of San Luis Obispo, State of California, as follows:

1. That the recitals set forth hereinabove are true, correct and valid.
2. That the Board of Supervisors makes all of the findings of fact and determinations set forth in Exhibit A attached hereto and incorporated by reference herein as though set forth in full.

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3. That the appeal filed by Nathan and April Vasquez is hereby denied and the decision of the Planning Director and Public Works Director is affirmed, and that the application of Nathan and April Vasquez for a waiver of curb, gutter and sidewalk improvements for DRC2005-00192 is hereby disapproved based upon the findings of fact and determinations set forth in Exhibit "A" attached hereto and incorporated by reference herein as though set forth in full.

Upon motion of Supervisor _____, seconded by Supervisor _____, and on the following roll call vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAINING:

the foregoing resolution is hereby adopted.

Chairperson of the Board of Supervisors

ATTEST:

Clerk of the Board of Supervisors

[SEAL]

APPROVED AS TO FORM AND LEGAL EFFECT:

JAMES B. LINDHOLM, JR.
County Counsel

By: 
Deputy County Counsel

Dated: 

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STATE OF CALIFORNIA,)
) ss.
County of San Luis Obispo)

I, _____, County Clerk and ex-officio Clerk of the Board of Supervisors, in and for the County of San Luis Obispo, State of California, do hereby certify the foregoing to be a full, true and correct copy of an order made by the Board of Supervisors, as the same appears spread upon their minute book.

WITNESS my hand and the seal of said Board of Supervisors, affixed this _____ day of _____, 2006.

County Clerk and Ex-Officio Clerk of the Board of Supervisors

(SEAL)

By: _____ Deputy Clerk

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EXHIBIT A - FINDINGS

CEQA Exemption

- A. This project is found to be statutorily exempt from the California Environmental Quality Act under the provisions of Public Resources Code section 21080(b)(5), and Guidelines Section 15042, which provides that CEQA does not apply to projects, which a public agency rejects or disapproves.

Waiver of Curb, Gutter and Sidewalk Improvements

- B. **Incompatible development:** The proposed development appears compatible with surrounding development patterns. Construction of new curb, gutter and sidewalk improvements will have a negligible impact to the existing drainage conditions of adjacent properties. Curb, gutter, sidewalk improvements will be designed to the grade and specification standards required by the Public Works Department in order to minimize any adverse impacts with regard to drainage on adjoining properties.
- C. **Premature development:** Curb, gutter and sidewalk improvements are compatible with surrounding development and this is not premature development because the new house on the site is one of first new construction in the area, after curb gutter and sidewalk became mandatory in this area. As the area fills in, this street will have a complete series of curb, gutter and sidewalks and this lot will end up being the "gap" as sidewalk improvements are constructed with other permits in the future. Improvements will be designed to provide a continuous, cohesive sidewalk system and polished streetscape throughout the urban area of the community of San Miguel.
- D. **Incompatible grade:** The site's slopes are compatible for the development of curb, gutter and sidewalk improvements, and curb, gutter and sidewalk cuts will not deter the use of the existing development of the site or surrounding properties, because curb, gutter, sidewalk improvements will be designed to the grade and specification standards required by the Public Works Department in order to minimize any adverse impacts with regard to adjoining properties.

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CURB, GUTTER & SIDEWALK WAIVER APPLICATION

San Luis Obispo County Department of Planning and Building

File No. _____

CURB, GUTTER AND SIDEWALK WAIVER APPLICATION

PROJECT INFORMATION

Type of land use permit associated with the request for curb, gutter and sidewalk waiver:

- Plot Plan
- Site Plan
- Minor Use Permit
- Development Plan
- Variance
- Bldg permit

File Number: Building permit # PMT 2004-200670

Date the above application was filed with the department: 8-25-04

Street(s) fronting the site: L Street

Street(s) requesting waiver for: L Street

- Type of improvement to be waived:
- Curb
 - Gutter
 - Sidewalk
 - All

REASON FOR WAIVER REQUEST

INCOMPATIBLE GRADE. The topography of the site is not appropriate for the required curb, gutter and sidewalk.
 Explain: Please see attached letter of explanation and photos

INCOMPATIBLE DEVELOPMENT. The curb, gutter and sidewalk are incompatible with the land uses in the vicinity as well as with existing and projected needs for drainage and traffic control.
 Explain: _____

PREMATURE DEVELOPMENT. The rest of the area doesn't have curbs, gutters and sidewalks and because the project is an interim use of the site, the required improvements can be obtained with further or intensified development later.
 Explain: _____

OTHER.
 Explain: Please see attached letter of explanation

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OFFICE USE ONLY

Date Received: _____ By: _____ Receipt No: _____

Planning Approved/Denied Date: _____ By: _____

Co-Eng Dept Approved/Denied Date: _____ By: _____

Reason: Incompatible Grade Incompatible Grade Premature Development Other

Comments from Engineering: Comments Attached _____

Revised 11/1/97

April 7, 2006

Department of Planning and Building, Department of Public Works

Re: Building Permit # PMT 2004-00670, Waiver application

This letter is in regards to a notice we received on March 21, 2006 pertaining to curb, gutter and sidewalk requirements for our building project at 1343 L Street in San Miguel. We have submitted a waiver for these improvements for several reasons. Photos are included for your reference.

The project is now approximately 75% complete and this is the first we have heard of this requirement. In addition to this permit, we were also required to obtain a major grading permit. The grading is complete, the driveway is in and the retaining walls are placed. These improvements that have been completed are not consistent with the need for sidewalk, curb and gutter. This should have been addressed long before this time. The financial implications at this point are critical. In addition, our grading plan would have been much different had we been advised of this requirement.

The slope and grade of this project, as well as the entire block, is not consistent with curb, gutter and sidewalk. As you can see in the subject property photos, our lot is steep. In order to add the sidewalk we would need the neighbors to retain their hillsides at our property corners. This extreme uphill slope is consistent with the entire block. In order for the remaining sidewalks to be placed in the future, large quantities of dirt would have to be moved and hillsides retained.

Several neighborhood projects were referenced in the letter we received. Photos have been added to compare the apparent differences in slope and street elevations from our project. In addition, the streets are considerably wider in those L Street areas than at our site at 1343 L Street. Our block is barely wide enough for two cars to pass. A 6' loss at street elevation would be detrimental to the site.

Please consider the implications of the curb, gutter and sidewalk improvements on our property. As we are aware of the importance of community upgrades, this does not fit in to the natural landscape and current property setbacks of the block. The street width makes this requirement nearly impossible. Upon further investigation, I'm sure you will see the impracticality of the proposed improvements.

Thank you for your consideration,

 
Nathan and April Vasquez – Homeowner/Builder
(805) 461-4196 or 674-6081

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EK



SAN LUIS OBISPO COUNTY DEPARTMENT OF PUBLIC WORKS

Noel King, Director

County Government Center, Room 207 • San Luis Obispo CA 93408 • (805) 781-5252

Fax (805) 781-1229

email address: pwd@co.slo.ca.us

TO: Department of Planning & Building

Date: 4-21-06

FROM: Department of Public Works

SUBJECT: CURB, GUTTER AND SIDEWALK WAIVER RESPONSE

Name	Nathan & April Vasquez	Waiver File No.	DRC2005-00192
A.P.N.	021-202-021	Project File No.	PMT2004-00670
Address	1343 "L" ST, San Miguel	Legal Description	Par 2, COAL 03-0166

Findings for curb, gutter and sidewalk exceptions per the Land Use Ordinance Sections 22.54.030d and 23.05.106d:

- 1. Incompatible grade:** Appears compatible. After viewing the pictures submitted by the applicant, it has been determined that the existing slopes can be graded back safely (2:1 max) to provide for Curbs, gutters and sidewalks.
- 2. Incompatible development (drainage and traffic control):** Appears compatible.
- 3. Premature development (bond for future construction):** Appears compatible.
- 4. Other: Board of Supervisors Modification:** The Board of Supervisors may choose to waive these site requirements. Additionally, regarding the pictures submitted by the applicant of the other properties (that are labeled as not having Curb, gutter, sidewalk and Road improvements) at 1243 L St., 947 L St. and 1226 L St., they have all been notified of the requirement to construct the Curb, gutter, and sidewalk and Road improvements, as required by the San Miguel Design Plan.

Public Works recommends denial of this waiver. See Findings Item No. 1 & 4 above for a detailed explanation.

By: 
Richard Marshall
Development Services Engineer

cc: Road File # 6021
CGSW file

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