

City of Sonoma

RESOLUTION # _____ - 2022

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SONOMA DENYING AN APPEAL BY HEATHER MARTINDALE OF THE PLANNING COMMISSION'S ACTION TO APPROVE RESOLUTION NO. 12 - 2022, ON FEBRUARY 10, 2022, RELATING TO THE LEGAL NONCONFORMING STATUS OF A PERGOLA/TRELLIS/ARBOR LOCATED AT 121 FRANCE STREET (ON THE SOUTH SIDE OF FRANCE STREET BETWEEN AUSTIN AVENUE AND BROADWAY) ON PROPERTY OWNED BY BETH HARPER IN THE LOW DENSITY RESIDENTIAL (LDR) ZONING DISTRICT (APN: 018-352-049)

WHEREAS, on March 10, 2021, in response to a formal complaint from Heather Martindale (the Appellant) who lives at 115 France Street, the City of Sonoma's Code Enforcement Department issued a "Preliminary Notice" letter to Beth Harper regarding several issues relating to an existing detached pergola/trellis/arbor (hereinafter "the trellis") located on Ms. Harper's adjoining property at 121 France Street;

WHEREAS, in the aforementioned letter, Code Enforcement staff stated that the existing detached trellis had been erected without a building permit and that it extends beyond the property line at 121 France Street (in violation of Section 19.040.110(A)(2) of the Sonoma Municipal Code which prohibits structures extending over property lines) on to property owned by Heather Martindale. The letter also directed the removal of the existing structure;

WHEREAS, on May 7, 2021, the Planning & Community Services Director, determined ("interpreted") that the existing trellis structure at 121 France Street is a legal nonconforming structure pursuant to City of Sonoma Municipal Code, Chapter 19.82. A determination or "interpretation" as to the correct or incorrect placement of the existing trellis on either property was not made by the Director;

WHEREAS, the City's current Development Code allows for an appeal of determinations made by staff pursuant to Section 19.02.030 "Procedures for interpretations" of the Sonoma Municipal Code;

WHEREAS, On May 17, 2021, within the appeal period, the City received an Appeal of the Planning and Community Services Director's "interpretation" which was filed by Heather Martindale who contests the Director's interpretation, and is also of the belief that the structure/use is illegally placed based on a survey she commissioned by Pridmore & Company and is an illegal nonconforming structure;

WHEREAS, the Planning Commission held a duly noticed public hearing on January 13, 2022, to consider Heather's Martindale's Appeal, including the documents and materials in the Record, and to hear and consider testimony and comments in favor of, in opposition to, or otherwise relating to, the Appeal;

WHEREAS, on January 13, 2022, the Planning Commission directed staff to prepare a resolution denying an appeal by Heather Martindale of the Planning & Community Services Director's interpretation made on May 7, 2021, relating to the legal nonconforming status of a pergola/trellis/arbor located at 121 France street (on the south side of France Street between Austin Avenue and Broadway) on property owned by Beth Harper in the Low Density Residential (LDR) zoning district (APN: 018-352-049);

WHEREAS, on February 10, 2022, the Planning Commission adopted Resolution No. 12 – 2022, a resolution denying an appeal by Heather Martindale of the Planning & Community Services Director's interpretation made on May 7, 2021, relating to the legal nonconforming status of a pergola/trellis/arbor located at 121 France street (on the south side of France Street between Austin Avenue and Broadway) on property owned by Beth Harper in the Low Density Residential (LDR) zoning district (APN: 018-352-049);

WHEREAS, the City received a timely appeal filed by Heather Martindale appealing the Planning Commission's adoption of Resolution No. ~~XX~~12 - 2022; and

WHEREAS, on November 2nd, 2022, the City Council held a duly noticed public hearing to consider Heather's Martindale's Appeal of the Planning Commission's action taken on March 10, 2022, , including the documents and materials in the Record, and to hear and consider testimony and comments in favor of, in opposition to, or otherwise relating to, the Appeal;

NOW, THEREFORE, BE IT RESOLVED, by the City Council of Sonoma, State of California, that the foregoing recitals are true and correct and hereby adopted by the City Council and the City Council finds as follows:

- I. Record
 1. The record of proceedings ("Record") upon which all findings and determinations related to the Appeal are based includes, but is not limited to:
 - a. Staff Reports by the Planning & Community Services Department and the City Attorney, and referenced Attachments;
 - b. March 10, 2021 Preliminary Notice from Code Enforcement Officer Braden Eggert to Elizabeth Harper;
 - c. May 7, 2021, letter from Planning & Community Services Director David A. Storer to Heather Martindale;
 - d. Appeal Application of Heather Martindale and supporting documents, including May 17, 2021 letter by Heather Martindale and referenced Exhibits;
 - e. October 19, 2021 letter from Richard J. Hicks, attorney for Elizabeth Harper, and referenced Exhibits;
 - f. Statement of Elizabeth Harper dated October 19, 2021;

- g. January 5, 2022, email from Richard J. Hicks to Director David Storer and City Attorney Jeffrey Walter;
- h. January 10, 2022, email from Heather Martindale, Subject: Planning Commission Meeting 1/13/2022 Original Appeal Documents, and referenced Exhibit Documents;
- i. January 13, 2022, email from Heather Martindale, Subject: Request for Matt Wirick's Recusal for 1/13/2022 Planning Commission Agenda Item 8.1 & Other;
- j. The proceedings at the **Planning Commission's** January 13, 2022, hearing, including all oral comments and testimony presented at the hearing, including comments and testimony by David Storer, Wayne Wirick, Heather Martindale and Richard J. Hicks, and the oral comments and deliberations of the Planning Commissioners at the hearing;
- k. **The proceedings at the City Council's November 2, 2022, hearing, including all oral comments and testimony presented at the hearing and the oral comments and deliberations of the City Councilmembers at the hearing.**
- k.l. The evidence, facts, findings and other determinations set forth in this Resolution; and
- l.m. All other documents comprising the record of proceedings pursuant to California Code of Civil Procedure section 1094.5.

2. The findings and determinations contained in this Resolution are based upon the evidence in the entire Record relating to the Appeal. All the evidence supporting these findings and determinations was presented in a timely fashion, and early enough to allow adequate consideration by the City. References to specific documents and specific pages of documents are not intended to identify those sources as the exclusive basis for the findings and determinations.

The custodian of the documents and other materials that constitute the Record of proceedings on which the City's decision is based is the City Clerk, or designee. Such documents and other materials are located at Sonoma City Hall, No. 1 The Plaza, Sonoma, CA 95476.

II. Findings and Determinations

1. There exists, and since before the City first adopted a Zoning Ordinance in 1948 and a Building Code in 1949 there has existed, a lawful prescriptive easement for the benefit of the property at 121 France Street over the adjoining property at 115 France Street for the use of a trellis to the extent the trellis extends beyond the property line onto 115 France Street.

The history of the trellis more likely than not extends back to the 1930s, when an extensive trellising system was installed by the then owner of 121 France Street, James J. Hayward, for the purpose of providing shade for camellia plants developed and grown by him and his wife as a part of a nursery they operated on the property. The trellis that exists today, which

is the subject of this Appeal, is what remains of that trellising system. In early 2021, it was discovered through a survey commissioned by Appellant Heather Martindale that the trellis slightly extends over the property line on to the property she currently owns at 115 France Street. Some of the vertical posts for the trellis extend almost 4 1/2 inches over the surveyed property line, and some of the upper horizontal beams extend over the line by almost 22 inches. (Draft copy of Record of Survey, attached as Exhibit R to Heather Martindale May 17, 2021 Appeal letter.)

The evidence in the Record establishes that all of the requirements for a prescriptive easement had been satisfied and that a prescriptive easement for the trellis existed in favor of 121 France Street to the extent it extended over the property line on to 115 France Street, by the time the City first enacted a Zoning Ordinance in 1948, Ordinance No. 206 (Exhibit 11 to Richard Hicks October 19, 2021 letter), and the City first enacted a Building Code in 1949, Ordinance No. 207 (Exhibit 12 to the Hicks letter).

“In order to establish an easement by prescription it must be shown that the easement was (1) used continuously for a period of five years, and (2) possessed in a manner that was open, notorious, and clearly visible to the owner of the burdened land and hostile and adverse to the owner.” (6 Miller & Starr, California Real Estate, 4th Ed., §15:29 (updated November 2020, citations omitted).)

“The claimant need not inform the servient tenement owner expressly of his or her hostile and adverse intent or declare that the use is under a claim of right. Use of property in a way that clearly displays the user's claim of right establishes a prima facie case that the use is under a claim of right, that it is adverse and hostile to the rights of the owner of the property, and that the owner has constructive notice of the adverse claim. The mere open, notorious, and visible use of the property can establish a prima facie case and create an inference or a presumption that the use is hostile and adverse. . . . A prescriptive easement may be acquired by the required use even though the user is acting under a mistaken belief that he or she owns the property or had a legal right to use the easement.” (Id., §15:35.)

Nothing has occurred since the prescriptive easement was first created to result in the loss of the easement, and the easement has continued to exist to the present time. For example, there has been no discontinuance or abandonment of the use of the easement or the trellis in question at any time during its history.

The 2001 repairs to the trellis and the slight raising of the trellis while decreasing its footprint and overall size, cited by Appellant, did not constitute a discontinuance or abandonment of the use of the easement, and were allowed by section 12 of the 1997 Zoning Ordinance governing nonconforming uses which was then in effect (Exhibit 14 to the Hicks letter). Subsection 4 of that section expressly allowed “normal

maintenance and repair of any non-conforming use or structure,” and the work that was performed with respect to the trellis in 2001 constituted such permissible repair and/or maintenance. In addition, because the overall footprint and size of the trellis were decreased, not increased, there was no requirement for Beth Harper to obtain a conditional use permit under subsection 1 providing that “[a] non-conforming use may only be expanded, enlarged in size or capacity, or extended to occupy a greater area, or increased in intensity by a conditional use permit.”

2. The trellis in question constitutes a legal nonconforming use and structure.

The vast majority of the trellis is located on the property at 121 France Street and, to the extent it extends over the property line on to 115 France Street, there has existed and still exists today a prescriptive easement for that use and structure. (See Finding and Determination 1 above.) When the 1948 Zoning Ordinance was adopted, and when a Building Code was adopted in 1949, the trellis constituted a lawful and legal use and structure.

Section 19.040.110(A)(2) of the current Sonoma Municipal Code prohibiting portions of a structure from extending beyond a property line was first enacted as a part of the City’s Municipal Code with the adoption of the current Development Code in 2003. At the time of that adoption, the trellis constituted a legal use and, by reason of section 19.040.110(A)(2), became a nonconforming use with respect to the extension beyond the property line. In other words, with respect to the property line issue, the trellis became a legal nonconforming use and structure with the adoption of the Development Code in 2003. The trellis retains its legal nonconforming status with respect to that issue at this time.

Regarding the setback requirements for accessory structures contained in current section 19.50.080, which Appellant alleges the trellis to violate, before the adoption of the 1997 Zoning Ordinance (Exhibit 14 to the Hicks letter) those setback requirements only applied to accessory “buildings.” A “building” was defined as “a structure having a roof supported by columns or by walls and designed for the shelter or housing of any person, animal, or property.” (Sections 19.04.105 and 19.46.030(B) of the 1975 Zoning Ordinance as amended in 1991, Exhibit 13 to the Hicks letter.) A trellis does not constitute a “building” as so defined. If the trellis does not conform to current section 19.50.080, that nonconformity arose at the time of the adoption of the 1997 Zoning Ordinance. The trellis constituted a legal use and structure at that time and, with respect to the setback requirements, may have become a nonconforming use and structure with the adoption of that 1997 Zoning Ordinance. If so, the trellis was a legal nonconforming use and structure at that time, and it retains its legal nonconforming status with respect to the referenced setback requirements at this time.

Appellant's remaining claims and arguments in support of her position that the trellis is not a legal nonconforming use or structure have been considered, and are rejected.

III. Indemnity

1. The property owner of 121 France Street and any successor in interest shall defend, indemnify, and hold harmless the City and its agents, officers, attorneys, and employees from any claim, action, or proceeding brought against the City or its agents, officers, attorneys, or employees to attack, set aside, void, or annul the ~~Planning Commission's~~ **City Council's** decision at issue herein, including any approval of the environmental review document(s) or environmental findings made in support of said decision. This indemnification shall include damages or fees awarded against the City, if any, costs of suit, attorney's fees, and other costs and expenses incurred in connection with such action whether incurred by said property owner, the City, and/or parties initiating or bringing such action.
2. The property owner of 121 France Street and any successor in interest, shall defend, indemnify, and hold harmless the City, its agents, employees, and attorneys for all costs incurred in additional investigation of or study of, or for supplementing, preparing, redrafting, revising, or amending any document, if made necessary by said legal action and the property owner desires to pursue having the ~~Planning Commission~~ **City Council** make the same or similar decision, after initiation of such litigation, which decision is conditioned on the approval of such documents in a form and under conditions approved by the City Attorney.
3. In the event that a claim, action or proceeding described in paragraph III(1) above is brought, the City shall promptly notify the property owner of 121 France Street of the existence of the claim, action, or proceeding, and the City will cooperate fully in the defense of such claim, action, or proceeding. Nothing herein shall prohibit the City from participating in the defense of any claim, action, or proceeding; the City shall retain the right to (i) approve the counsel to so defend the City, (ii) approve all significant decisions concerning the manner in which the defense is conducted, and (iii) approve any and all settlements, which approval shall not be unreasonably withheld. The City shall also have the right not to participate in said defense, except that the City agrees to cooperate with the property owner in the defense of said claim, action, or proceeding. If the City chooses to have counsel of its own to defend any claim, action, or proceeding where the property owner has already retained counsel to defend the City in such matters, the fees and expenses of the counsel selected by the City shall be paid by the property owner.
4. The property owner of 121 France Street and any successor in interest, shall indemnify the City for all the City's costs, fees, and damages which the City incurs in enforcing the above indemnification provisions.

IV. Denial of Appeal.

Based on the Record and the Findings and Determinations set forth in this Resolution, the ~~Planning Commission~~ **City Council** hereby denies the Appeal of Heather Martindale of the Planning & Community Services Director's Interpretation Made on May 7, 2021, Relating to the Legal Nonconforming Status of a Pergola/Trellis/Arbor Located at 121 France Street (On the South Side of France Street Between Austin Avenue and Broadway) On Property Owned by Beth Harper in the Low Density Residential (LDR) Zoning District (APN: 018-352-049).

V. CEQA Findings.

The action taken by the ~~Planning Commission~~ **City Council** to deny the appeal is not a project under CEQA, and even if were a project, it would be exempt from further environmental review under the General Rule in California Environmental Quality Act (CEQA) Guidelines Section 15061(b)(3) that CEQA only applies to projects that have the potential for causing a significant effect on the environment. At issue in this appeal is whether or not an existing structure is a legal non-conforming use. The Planning and Community Services Director **and Planning Commission** determined that the structure was such a legal non-conforming use. This determination did not result in or involve any change in the structure or any change in or to the environment. As an appeal of a determination by the Planning ~~and Community Services Director~~ **Commission** regarding an existing structure, it can be seen with certainty that there is no possibility that denial of the appeal by the ~~Planning Commission~~ **City Council** will have any, let alone a significant, effect on the environment.”

I HEREBY CERTIFY that the foregoing resolution was duly and regularly adopted by the City Council of the City of Sonoma, Sonoma County, California, at a meeting thereof, held on the 2nd day of November, 2022, by the following vote.

ADOPTED this 2nd day of November 2022, by the following vote:

AYES:
NOES:
ABSTAIN:
ABSENT:

Jack Ding, Mayor

ATTEST:

Rebekah Barr, MMC, City Clerk