



MARINA COAST WATER DISTRICT

11 RESERVATION ROAD • MARINA, CA 93933-2099

Home Page: www.mcwd.org

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April 20, 2009

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KENNETH K. NISHI

DAN BURNS

Mr. Salvatore Lucido
310 Monterey Avenue
Pacific Grove, CA 93950

Subject: Response to Variance Request
Regarding capacity charges associated with 223/225 Palm Avenue, Marina, CA

Dear Mr. Lucido,

Marina Coast Water District (District, MCWD) received your substantially complete Variance Request Form on April 14, 2009. Per MCWD's Code, section 2.08.020 – Variances, this letter serves as the District's written determination of the interpretation and application of the Code and recommendation for action to the District Board of Directors regarding the variance request.

The District's General Manager hereby determines that a variance from the application of the Code section identified in the Variance Request Form is not recommended. Further, the General Manager's recommendation to the Board is that the variance is not recommended and that no formal Board Agenda item be brought to the Board for action. The basis of the recommendations above is that the applicant has not proven by clear and convincing evidence that the requirements of MCWD's Code section 2.08.020 have been met.

The MCWD Board of Directors meets on May 12, 2009 and the next Board Meeting after the May 12 event is scheduled to occur on June 9, 2009.

Please contact me at (831) 883-5938 or Mr. Brian True, Interim District Engineer, at (831) 883-5937 if you have any questions.

Sincerely,



Jim Heitzman
General Manager


Cc: Brian True – Interim District Engineer
File

MEMORANDUM

Marina Coast Water District

DATE: April 16, 2009
FILE: 223/225 Palm Avenue

TO: Jim Heitzman, MCWD General Manager

FROM: Brian True, MCWD Interim District Engineer 

SUBJECT: **Variance Request from Applicant regarding Water and Sewer Capacity Charges for Lot Located at 223/225 Palm Avenue**

I have recently received and reviewed the enclosed Variance Request for Lot 223/225 Palm Avenue. I recommend the District deny the Variance Request.

The applicant is requesting a variance concerning MCWD Code Section 6.08.090, Paragraph "D" (copy enclosed). This section states that if a connection is not made to the District's water system within one year from the date a capacity charge is paid (and after the effective date of this provision - August 8, 2007), the difference between the amount of the capacity charge paid and the amount of the revised capacity charge in effect at the time of the connection shall be paid to the District before the connection is installed.

According to the applicant (lot owner), he was not informed of this specific code at the time he paid the connection costs (meter fees, capacity charges, etc) on April 2, 2008. Currently, the District has not approved the associated utility drawings that have revisions still pending; consequently, the District has not installed a meter at the site that will complete the connection.

The recommendation for denial is based on the applicant's failure to fully satisfy all the "Basis of Variance Request" criteria as highlighted in Part B of the Variance Request Form. The request fails to meet 2 of the 3 criteria. This is discussed in greater detail below:

1. According to the applicant, the additional connection costs are a financial hardship; however, the applicant does not make it clear why this is an "undue" hardship as required in the Variance Request process. According to our records, the applicant has delayed the review process by not responding to the revisions requested by the District. Also, the applicant does not document or describe how the application of this code will result in unfair or unequal treatment to the applicant. In accordance with District policy, this code is, and will be applied fairly to all present and future applicants. Finally, the applicant does not claim that an emergency condition exists.
2. Granting a variance will not cause a significant adverse effect on the water supply or on the service to other persons served by the District; therefore, the Variance Request does not present a conflict with this criterion.
3. The variance is not in the best interest of the District since the District is obligated to accrue funding for future capital improvement projects for the benefit of the District's rate payers.

If you have any questions, please contact me at ext. 5937.



Variance Request Form for Marina Coast Water District

Assigned _____
Reviewed _____
Granted / Denied _____
Account No. _____

PART A - APPLICANT INFORMATION

Requested Variance (include District Code Section) _____

Date of Submittal of Variance Request 4/1/09

FAX date
on completed form
is 4-14-09 *Blm*

Has applicant applied for the same or similar variance previously? YES NO UNKNOWN

If YES, to above, please provide details _____

Request:

Name of Applicant (Contact) Salvatore Lucido

Applicant Relationship to Owner owner

Billing Name (if different from above) _____

Street/Mailing Address for Variance ~~3001 30th St~~ City Marina State CA Zip 93933

Street/Mailing Address for Billing (if different) ³¹⁰ Monterey Ave City PC State CA Zip 93950

Daytime Phone Number 831-320-2937 Fax Number 831-394-0545

PART B - BASIS OF VARIANCE REQUEST

1. The strict application of the code would result in unfair or unequal treatment, undue hardship, or an emergency condition exists which requires that the variance be granted; and,
2. Granting the variance will not cause a significant adverse effect on the water supply or on service to other persons served by the district; and,
3. The variance is in the best interests of the district.

This variance request may only be based on the above conditions. Please briefly describe the basis of your request and provide documentation of need in Part C. If further space is required in the completion of this form, provide a note of such and attach supporting documentation with application.

We are requesting variance on the Capacity Charges. When we applied and paid for our charges last year we were never told we had 1 year or we would need to pay extra. Although I understand that this might ultimately be my responsibility we are not talking about a few hundred dollars we are talking about 14,000 as a years tuition of college. When I spoke to Gary concerning this I was told that he does let customers know, however we were never told this by John Zellar. It is apparent that these are not your usual yearly hike fees, but a price hike that probably has not occurred in years, therefore we feel even more so we should of been told. In todays tough economy we have been trying to save as much as possible, that is the reason this project has taken longer to finish, had we known the cost we would have tried or finished to not acquire these fees or at least budget for it. We feel that it is unfair and a hardship to have to pay this fee.

PART C - EVIDENCE TO SUPPORT VARIANCE

Provide documentation to support you request. Documentation should concisely prove the need for a variance. Please list documents below and attach copies with your application. Original records will not be returned.

PART D - REQUESTED ACTION

What specific action are you requesting that the Board take?

That we not be charged the
water capacity sewer charge. we already
paid these fees
6.05.090

- I understand that the application for a variance does not guarantee a variance will be granted.
- I have contacted the owner and he has given his permission to process this application, or I am the property owner.

Applicant:

Applicant's Name: Salvatore Lucido

Applicant's Signature: [Signature]

Date: 4/9/09

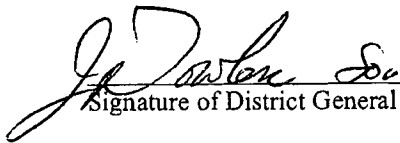
PART D – GENERAL MANAGER’S RECOMMENDATION (for internal use by Marina Coast Water District)

Having fully considered the above application for variance, I find that the Application has NOT proven by clear and convincing evidence that the requirements of Section 2.08 Variances have been met. Based on the foregoing, a VARIANCE IS NOT RECOMMENDED.

Having fully considered the above application for variance, I find that the Applicant has proven by clear and convincing evidence that the requirements of Section 2.08 Variances have been met. Based on the foregoing, a VARIANCE IS RECOMMENDED.

This request will be on the Marina Coast Water District Board agenda currently scheduled for _____. Please call the District to confirm this date.

Explanation _____


Signature of District General Manager

4/20/09
Date