

### City of Calistoga Appeal Application Form

- A copy of the City's Municipal Code excerpt regarding appeals and the appeals procedure summary is attached.
- The fee to file an appeal is \$200.00 and must accompany this form.
- Appeals must be filed with the City Clerk within ten (10) calendar days of the action.
- Appeals must address issues raised or decisions made.
- In order for your appeal to be determined to be complete this form must be filled out entirely.

Appellant Information (Please Print)			
Appellant Name <u>ROBERT HITCHCOCK &amp; MARIANNE HITCHCOCK</u>			
Appellant Address <u>1322 BERRY ST</u>		City <u>CALISTOGA</u>	State/Zip Code <u>CA 94515</u>
Appellant Phone <u>707 942 0619</u>	Fax <u>N/A</u>	Email <u>gypsyking44@yahoo.com</u>	
Representative Address <u>NONE AT THIS TIME</u>		City <u>-</u>	State/Zip Code <u>-</u>
Representative Phone <u>-</u>	Fax <u>-</u>	Email <u>-</u>	

I/We the undersigned do hereby appeal the decision of the:

- Planning Commission
  Board of Appeals  
 Department Director or Department Staff
  Other \_\_\_\_\_

Regarding: POGGI - LESTRANGE SETBACK VARIANCE VA-2013-06  
(Title of project or application)

Located at: 1332 1/2 BERRY STREET CALISTOGA CA 94515  
(Address)

Made on: SEPTEMBER 11, 2013  
(Date decision was made)

I/We hereby declare that I/We are eligible to file an appeal because:  
(Refer to Chapter 1.20 of the Calistoga Municipal Code, Appeals - attached)

PER CMC 1.20.030 A.8 WE ARE APPEALING THE PLANNING COMMISSION'S DECISION TO GRANT THE VARIANCE AS THE ADJOINING PROPERTY OWNERS FOR THE REASONS DESCRIBED IN ATTACHED DOCUMENTS.  
The facts of the case and basis for the appeal are: (Additional sheets may be attached)  
SEE ATTACHED

I/We request that the City Council take the following specific action(s): (Additional sheets may be attached)

REVERSE THE PLANNING COMMISSION'S APPROVAL OF VARIANCE VA 2013-06

Signed: Robert Hitchcock  
(Signature)  
Marianne Hitchcock  
(Signature)

9-23-13  
(Date)  
9-23-13  
(Date)

## Attachment to Appeal Application Form

Re: Poggi-LeStrange Setback Variance VA 2013-06

Statement of Robert and Marianne Hitchcock

On Wednesday, September 11, 2013, the Calistoga Planning Commission approved the subject variance. Seven days earlier, on Wednesday, September 4<sup>th</sup>, we had received notice of this hearing, but no details about the actual proposed construction project. It was not until Monday, September 9<sup>th</sup>, two days before the hearing, that we were finally able to meet with the applicant and review the proposal. We were both stunned by the impact this proposal would have on our property.

On Tuesday, with only one day to prepare, I researched the issue, wrote my letter to the Planning Commission and had it in the mail boxes of the Commissioners on Wednesday morning. At the hearing I was chastised for this late submission. This seemed to have a very negative impact on the Commissioners, which I felt unfairly clouded my testimony.

In preparing for this appeal request, it was my plan first to review the video of the hearing of September 11<sup>th</sup> on YouTube. I wanted to clarify my statements when they were not clearly stated, and I wanted to respond to the actual statements made by the Commissioners. Not in this case, however. Only a very brief portion of my comments are available. All other portions have been deleted. So I cannot respond to what the Commissioners said, since those statements are not available to me.

A review of the findings, however, does provide ample evidence that there is insufficient factual basis for the findings in the Staff Report, and that the Planning Commission was wrong in granting its approval. This is detailed on the following pages.

Joe Bob and Lily Hitchcock  
1322 Berry Street, Calistoga

Following is a brief analysis of the four findings necessary to approve the Variance.

Finding #1:

It is a requirement that conditions apply to the subject property that do not apply generally to other properties in the same zone or vicinity. There is no evidence to substantiate that this is the case. The Regulatory controls resulting from the Napa River apply to all properties along the floodplain, including my own parcel. The subject parcel is not unique.

The Staff Report states that there are unique circumstances that *“force development to the southernmost property line”*. The applicants are not forced to do this. They have other options, such as (a) upgrading the existing building with air conditioning, insulation, etc. to make it more livable, or (b) rebuilding the existing structure in the front yard to add an upstairs unit, just to name two. They could also just do nothing. Additionally, the heading on the Planning Commission's own website points out that California courts have consistently held that development is a privilege not a right. It is incumbent on the City of Calistoga to follow this legal guideline.

Finding #2:

It is a requirement that the variance be necessary for the preservation of a property right of the applicant, substantially the same right as is possessed by owners of other property in the same vicinity. The applicant already has 3 units on their R-3 property which is exactly the same right as all other owners of R-3 zoned property. They do not have to preserve this property right; it is not threatened in any way.

In fact, the applicant actually enjoys a unique property right not enjoyed by other similarly zoned and FEMA restricted properties in this zone. They already have, and can keep, a vested non-conforming structure; other property owners in this zone most likely do not enjoy this property right.

To allow the applicant actually to increase the degree of non-conformity, by substantially expanding the height and square footage of the existing structure, in the course of building a new, larger non-conforming structure, would be to grant them a special and exclusive property right that others do not enjoy.

Finding #3:

This finding says that the result of the variance must not be materially detrimental or injurious to other property in the zone where located.

The finding in the Staff Report is truly impossible to comprehend. For example, it says *"Granting the rear and side yard setback variances would likely have no impact on views, privacy, or fire safety"*. This is clearly not the case.

First, let me point out that not one person from City Staff or from the Planning Commission ever came to our property to see, firsthand, the impact this proposed structure would have on us. There will be a major detrimental, injurious impact on our property. Here is why.

1. We originally bought our property largely because it had a very private back yard. Had the proposed structure been in existence then, we would never have bought this house.
2. The views we enjoy from our back yard are of the trees and shrubbery which surround us on three sides (the fourth being our house), and achieved with scant loss of privacy. In our current view to the north, toward the applicant, we partially see the existing garage, but only the roofline of the rest of the existing structure. It actually is a very natural setting. This view will now be dominated by the back side of a house on a raised foundation, rising 10 feet above the fence line, 50 feet in width, and with 3 windows plus a sliding glass door looking in on us. Our view is ruined. You can only comprehend this from our side of the fence.
3. Our privacy will be lost. The occupants will be staring down into our back yard, our deck area, our flower garden and fountain, our back door area (which we use 95% of the time when we come and go), and directly into our kitchen area which is essentially a wall of glass. We will have a complete loss of privacy both in much of our back yard area and inside part of our home. Frosted glass is not the answer as these windows are intended to be kept open for ventilation.
4. Our property value will go down. Privacy in a back yard always increases a property's value relative to similar properties; a huge new building on the property line staring into that back yard will always decrease a property's value. Ask any Realtor! The Planning Commission not only did not agree with this, one Commissioner actually said he thought those circumstances would increase our property's value. How can the Commission believe this? They are wrong.

This one finding by City Staff is so completely contrary to the stated intent of the finding (must not be materially detrimental or injurious to other property) that it is hard to see how the Planning Commission could let it go forward as the City's position. This finding is not met in many ways.

Finding #4:

This finding says that the requested variance is the minimum variance which would alleviate the hardship. City Staff says it is the minimum, again without presenting any facts to substantiate this position.

First, what is the hardship? There is simply no hardship. Wanting to change the rules, to build a structure that the rules say you cannot build, does not create a hardship. Remember, the applicant does not have a right to do this project, and it does not meet the findings necessary to be granted a variance. Development is a privilege and is simply not appropriate in this case. Options are available as noted above with no change to existing and vested conditions, and which would not require any variance.

Additional Information:

This variance request is definitely not exempt from complying with CEQA. Granting multiple variances in a protected flood management and stream protection zone, to increase the size and degree of non-conformity of a structure, and to add an additional non-conforming structure, exceeds the threshold of significance for a possible adverse impact on the environment. CEQA rules should be followed.

Reading the Calistoga Municipal Code (CMC) is very hard for a novice and I do not have anyone on City Staff to be my advocate. I am unsure about two issues I found, however I wish to raise them here.

CMC 17.37.050 H. seems to state that the floor area of a second dwelling structure shall not exceed 750 Square feet. The proposal is 931 square feet.

CMC 17.19.020 F. 3. says that the setback for a building in a rear yard should be 10 feet for one story buildings, not 5 feet. I guess it is debatable where the rear yard begins, but the proposed structure certainly looks in on my rear yard.

I believe we have presented sound arguments refuting each of the 4 findings by City Staff. They are not supported by facts, and if any one of the findings is not substantiated, the appeal must be granted.

Therefore, we request that the City Council grant this appeal.



**VICINITY MAP**

**1328, 1332 & 1332 1/2 Berry Street (APN 011-222-001)**

