





# Town of Tiburon

## STAFF REPORT

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the Design Review Board may consider this expense in its decision, but is not obligated to do so.

### **Zoning**

Staff has reviewed the proposal and finds it to be in conformance with the development standards for the RO-1 zone with the exception of the previously noted variance for excess fence height.

### Variance

In order to grant the requested variance, the Board must make all of the following findings required by Section 4.03.05 of the Tiburon Zoning Ordinance:

1. ***Because of special circumstances applicable to the property, including size, shape, topography, location, or surroundings, the strict application of this Ordinance will deprive the applicant of privileges enjoyed by other properties in the vicinity and in the same or similar zones.***

The grade on the subject property slopes down from the parking lot above to Hilary Drive below. This change in topography has resulted in a special circumstance that would make any improvements on this portion of the property highly visible from the adjacent residence without a fence taller than the six foot maximum fence height permitted in this zone. A six foot tall fence on this portion of the site would be inadequate to address the visual impact concerns of the neighboring property owner at 745 Hilary Drive.

2. ***The variance will not constitute a grant of special privileges, inconsistent with the limitation upon other properties in the vicinity and in the same or similar zones.***

Numerous other properties in the vicinity and in other single-family residential zones in Tiburon have received variances for excess fence height in areas where the topography of the site would make a six foot fence inadequate to meet the normal needs for privacy or screening enjoyed by other residential property owners.

3. ***The strict application of this Ordinance would result in practical difficulty or unnecessary hardship.***

A six foot fence along the entire rear property line would place a hardship on the neighboring property owner, by exposing a portion of their residence to views of any improvements on this portion of the subject property.

4. ***The granting of the variance will not be detrimental to the public welfare or injurious to other properties in the vicinity.***

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As noted above, the design of the proposed fence would not appear to result in unwanted view or visual impacts on neighboring properties, but would provide appropriate screening for the owner of the property at 745 Hilary Drive.

From the evidence provided, Staff believes that there is sufficient evidence to support the findings for the requested variance.

### **Public Comment**

As of the date of this report, no additional public comment has been received regarding this application since the last meeting.

### **RECOMMENDATION**

The Board should review this project with respect to Zoning Ordinance Sections 4.02.07 (Guiding Principles) and determine that the project is exempt from the provisions of the California Environmental Quality Act (CEQA) as specified in Section 15303. If the Board agrees with the Staff analysis contained herein, Staff would recommend that the attached conditions of approval be applied.

### **ATTACHMENTS**

1. Conditions of approval
2. Letter from Susan Seitas Maggiora, dated August 18, 2004
3. Submitted plans

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### CONDITIONS OF APPROVAL

#### 761 HILARY DRIVE

#### FILE #20428

1. This approval shall be used within three (3) years of the approval date, and shall become null and void unless a building permit has been issued.
2. The development of this project shall conform with the application dated by the Town of Tiburon on July 28, 2004, or as amended by these conditions of approval. Any modifications to the plans of July 28, 2004, must be reviewed and approved by the Design Review Board.
3. Plans submitted to the Building Division for plan check shall be identical to those approved by the Design Review Board. If any changes are made to the approved Design Review plans, the permit holder is responsible for clearly identifying all such changes when submitted to the Building Division for plan check. Such changes must be clearly highlighted (with a "bubble" or "cloud") on the submitted plans. A list describing in detail all such changes shall be submitted and attached to the building plans, with a signature block to be signed by the Planning Division Staff member indicating that these changes have been reviewed and are approved, or require additional Design Review. All changes that have not been explicitly approved by Staff as part of the Building Plan Check process are not approved. Construction that does not have Planning Division approval is not valid and shall be subject to stop work orders and may require removal.
4. The applicant must meet all requirements of other agencies prior to the issuance of a building permit for this project.
5. All exterior lighting fixtures must be down light type fixtures.
6. The absolute height of the top of the fence shall be as shown on the submitted plans, with a height from finished grade of no more than ten (10) feet.