

# Town of Tiburon

## STAFF REPORT

AGENDA ITEM \_\_\_\_\_ F8



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TO:                   **DESIGN REVIEW BOARD**

FROM:               **KRISTIN KRASNOVE, ASSOCIATE PLANNER**

SUBJECT:           **1659 MAR WEST STREET; FILE NO. 20530**  
**SITE PLAN AND ARCHITECTURAL REVIEW FOR THE AS-BUILT**  
**CONSTRUCTION OF A FENCE, WITH A VARIANCE FOR EXCESS**  
**FENCE HEIGHT**

MEETING DATE:   **OCTOBER 6, 2005** \_\_\_\_\_

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### **PROJECT DATA:**

**ADDRESS:**                               **1659 MAR WEST STREET**  
**ASSESSOR PARCEL NUMBER:**       **059-051-12**  
**FILE NUMBER:**                         **20530**  
**OWNER:**                                 **RICHARD MCCARTHY**  
**ZONING:**                                 **R-2 (TWO-FAMILY RESIDENTIAL-OPEN)**  
**GENERAL PLAN:**                       **MH (MEDIUM-HIGH DENSITY RESIDENTIAL)**  
**FLOOD ZONE:**                           **C**  
**DATE COMPLETE:**                      **NOVEMBER 12, 2004**

### **PRELIMINARY ENVIRONMENTAL DETERMINATION:**

Town Planning Division Staff has made a preliminary determination that this proposal would be exempt from the provisions of the California Environmental Quality Act (CEQA) as specified in Section 15301.

### **PROPOSAL:**

The applicant is requesting Site Plan and Architectural Review approval to legalize portions of the as-built fence on the property located at 1659 Mar West Street. The property is developed with a single-family home.

The applicant submitted a Site Plan and Architectural Review application on August 13, 2004 for a 6' high perimeter deer fence. A staff level approval requiring a maximum fence height of no more than six feet was issued for the subject fence on September 13, 2004. The building permit was issued on October 1, 2004. The perimeter fence was then constructed; however, various portions of the fence were built in excess of the six foot height limit.

The front yard portion of the fence was installed directly above the previously existing three foot high retaining wall; however, unless a fence and/or wall is separated by three or more feet, the



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heights of the structures are combined to determine the total wall or fence height. The front yard portion of the fence is therefore considered to have an overall height of nine feet, which exceeds the maximum fence height within a required setback.

The gate was also constructed to a maximum height of six feet, eight inches, and due to the uneven topography of the property, other portions of the perimeter fence exceed the six foot height limit by approximately four inches in certain areas. Additionally, in the southeast corner of the property, a four foot fence was constructed above a four foot berm to ensure the deer were kept out; however, this also creates a measured height of greater than six feet. Due to these situations a variance for excess fence height is requested.

### **ANALYSIS:**

#### **Design Issues**

In an attempt to enclose the property with a deer fence, the applicants constructed a wood and wire fence with lattice that follows the existing topography. The fence maintains an even fence line despite the uneven sloping nature of the lot. The subject fence is mostly transparent in nature with lattice added to the front portion to aesthetically improve the entrance to the property.

The subject fence is highly visible to properties along Mar West Street; however, the fence should not interfere with any significant views from nearby homes. The Design Review Board should determine whether the location of the over height fence would result in an unwanted visual streetside appearance for this property.

#### **Zoning**

Staff has reviewed the proposal and finds it to be in conformance with the development standards for the R-2 zoning district with the exception of the previously noted variance for excess fence height.

#### **Variance**

In order to grant the requested variance, the Board must make the following findings as 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 subject property slopes from south to north creating the existence of retaining walls and berms around the property. In order to keep deer out of the property, a fence must be installed above the existing walls and berms, creating the need for excess fence height.



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- 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 other properties in the R-2 zone 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 deer protection needs enjoyed by other residential property owners.

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

In order to achieve adequate deer protection for the property the fence needs to be located above the previously existing retaining wall and berms. Requiring the relocation of the previously existing walls and berms would place an unnecessary hardship on the applicant.

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

As proposed, the design of the subject fence would not appear to result in unwanted view or visual impacts on neighboring properties and would not result in significant impacts detrimental to the public welfare or injurious to other properties in the vicinity.

### **Public Comment**

Two letters in support of the project have been received from the adjacent property owners at 1655 and 1661 Mar West Street.

### **RECOMMENDATION:**

It is recommended that the Board review this project with respect to Zoning Ordinance Sections 4.02.07 and 4.03.05 (Guiding Principles, and Variance Findings by Acting Body) 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 staff's conclusions, then it is recommended that the project be approved with the attached Conditions of Approval.

### **EXHIBITS:**

1. Conditions of Approval
2. Application and supplemental materials dated September 6, 2005
3. Plans for the proposed project
4. Letter from Diane Ho, received September 6, 2005
5. Letter from Kalaya Cooke, received September 12, 2005

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### EXHIBIT 1

#### **CONDITIONS OF APPROVAL 1659 MAR WEST STREET FILE #20530**

1. This approval shall be used within 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 to the application received by the Town of Tiburon on September 6, 2005, or as amended by these conditions of approval. Any modifications to the approved plans must receive further design review and approvals.
3. Plans submitted to the Building Department 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 Department 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 Design Review 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 Design Review approval is not valid and shall be subject to stop work orders and may require removal.
4. If this approval is challenged by a third party, the property owner/applicant will be responsible for defending against this challenge. The property owner/applicant agrees to defend, indemnify and hold the Town of Tiburon harmless from any costs, claims or liabilities arising from the approval, including, without limitations, any award of attorney's fees that might result from the third party challenge.