

Town of Tiburon

STAFF REPORT

AGENDA ITEM _____ E4



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TO: **DESIGN REVIEW BOARD**

FROM: **KRISTIN KRASNOVE, ASSOCIATE PLANNER**

SUBJECT: **263 LOMA AVENUE; FILE NO. 20534**
SITE PLAN AND ARCHITECTURAL REVIEW FOR THE
CONSTRUCTION OF FENCE ABOVE AN EXISTING RETAINING WALL,
WITH A VARIANCE FOR EXCESS WALL AND FENCE HEIGHT

MEETING DATE: **OCTOBER 20, 2005** _____

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PROJECT DATA:

OWNER:	JAMES AND RAYNA BERNARD
APPLICANT:	KENWOOD FENCING
ADDRESS:	263 LOMA AVENUE
ASSESSOR PARCEL NUMBER:	059-132-21
FILE NUMBER:	20534
LOT SIZE:	11,016 SQUARE FEET
ZONING:	R-1 (SINGLE-FAMILY RESIDENTIAL)
GENERAL PLAN:	MH (MEDIUM-HIGH DENSITY RESIDENTIAL)
FLOOD ZONE:	C
DATE COMPLETE:	SEPTEMBER 30, 2005

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 construct a three foot wood fence above an existing four foot to six foot tall retaining wall along the west property line. The property is developed with a single-family home.

The applicant submitted a Site Plan and Architectural Review application on April 15, 2005 for a pool and fence. The retaining wall on the west property line was proposed to be replaced and the fence was proposed to be set three feet back from the wall. A staff level approval requiring a maximum wall and fence height of no more than six feet was issued for the subject fence on May 12, 2005. During construction, however, the applicant decided to request that the fence be located on top of the retaining wall to provide more space in the yard around the pool.



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The subject property slopes from east to west with the rear property line adjoining the property at 280 Diviso Street. Due to the height of the subject retaining wall and fence, a variance for excess wall and fence height is requested (nine feet in lieu of the allowed six feet). If the fence was set three feet back from the top of the wall, the height of the fence and the wall would be calculated separately. In essence, the applicant is requesting relief from the three foot separation requirement.

ANALYSIS:

Design Issues

The face of the subject retaining is visible from the downhill properties. The wall would be 86 feet long, and the three foot wood fence would be directly above the wall for the entire length of the wall. The fence would be solid wood posts to enhance privacy between the pool area on the subject property and the downhill neighbors. The pool would be located ten feet from the property line. Due to the drop off from the top of the wall, a safety railing or fence is required per the California Building Code. The applicant has suggested that privacy would be increased by locating the required fence directly atop the retaining wall, creating the need for a variance for excess wall and fence height.

Zoning

Staff has reviewed the proposal and finds it to be in conformance with the development standards for the R-1 zoning district with the exception of the previously noted variance for excess wall and 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 significantly from east to west creating the need for a retaining wall along the west property line. In order to construct a pool and allow for adequate safety and privacy, a fence is required in addition to the retaining wall, creating the need for excess wall and fence height.

- 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.**



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Numerous other properties in the vicinity and other properties in the R-1 zone have received variances for excess wall height in areas where the topography of the site would make a six foot wall and railing inadequate to meet the slope retention and safety 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 space around the pool, the fence needs to be located directly above the retaining wall. Furthermore, unless a fence and/or wall is separated by three or more feet, the heights of the structures are combined to determine the total wall or fence height. Requiring the relocation of the railing three feet back would not allow for adequate space or adequate privacy and 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 wall 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.

From the evidence provided, Staff believes that there is sufficient evidence to support the findings for the requested excess wall and fence height variance.

Public Comment

To date, two letters have been received in support of the project from the neighboring property owners at 280 Diviso Street and 260 Diviso 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 30, 2005.
3. Applicant's findings for the Variance
4. Letter from Charles Locati, received September 30, 2005
5. Letter from Margaret Patton and Dennis Williams, received September 30, 2005
6. Plans for the proposed project.

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EXHIBIT 1

CONDITIONS OF APPROVAL 263 LOMA AVENUE FILE #20534

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 30, 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.