





# Town of Tiburon

## STAFF REPORT

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The portion of the fence that was increased is along the southern and eastern property lines. The existing grape steak fence along the west property line would remain at six feet in height. Since the maximum height for a fence within any required setback is six feet, a variance for excess fence height is requested (7'6" in lieu of the maximum 6').

### **ANALYSIS:**

#### **Design Issues**

The increase in fence height would not be highly visible. The subject fence consists of nine foot posts with three rows of thin, copper wire along the top above six feet. The fence is therefore nearly invisible above the six foot height, except for the wood posts. This design allows for increased deer protection without significant aesthetic impacts.

The subject fence would be most visible from the property at 5 Francisco Vista Court. The previously approved grape stake fence along the west property line is highly visible to the uphill neighbors along Avenida Miraflores; however, no change in that portion of the fence is proposed. The Design Review Board should determine whether the location of the over height fence would result in an unwanted visual appearance for this property.

#### **Zoning**

Staff has reviewed the proposal and finds it to be in conformance with the development standards for the R0-2 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 steeply from west to east creating the opportunity for deer to jump the existing fence onto the property. In order to keep deer out of the property, the fence height needs to be increased. The strict application of the fence height regulation would deprive the applicant of privileges enjoyed by other properties in the vicinity.

- 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 properties in the R0-2 zone have received variances for excess fence height in areas where the topography of the site

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would make a six foot fence inadequate to meet the normal 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 increased in certain locations due to the slope. Requiring the applicant to develop an alternative solution for deer protection 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**

To date, no public comment has been received in reference to the subject project.

#### **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 November 4, 2005.
3. applicants findings for the variance
4. Plans for the proposed project.

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### EXHIBIT 1

#### **CONDITIONS OF APPROVAL 3 FRANCISCO VISTA COURT 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 November 11, 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.