



Town of Tiburon

STAFF REPORT

ANALYSIS

Design Issues

The subject property is accessed via a shared driveway leading down from Via Capistrano. The property rears onto the Bel Aire School site. The rear yard slopes down from the house toward the playing fields behind the school.

The applicants have indicated that deer easily access the rear of their property from the school site and that a 6 foot tall fence would not keep deer out of the property. The additional strand of wire proposed to be installed at the top of the fence would provide an appropriate barrier to deer without creating more visual mass for the fence.

The location of the proposed fence is somewhat screened from view by vegetation in the rear of the subject property and the school site. The fence would not appear to be particularly visible from any nearby homes.

Zoning

Staff has reviewed the proposal and finds it to be in conformance with the development standards for the RO-2 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 subject property is located adjacent to Bel Aire School with a sloping rear yard that provides open access to the site for deer and other animals. The strict application of the fence height requirements would deprive the applicant of the deer protection privileges enjoyed by other properties in the vicinity and in the same or similar zones.

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 in the RO-2 zone in Tiburon have received variances for excess fence and wall heights to address deer protection issues that would not be adequately mitigated by a 6 foot tall fence.

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

The construction of a 6 foot tall fence would create a practical difficulty for the applicants by being an ineffective barrier to deer accessing the site.

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

As noted above, the design of the subject fence would not result in unwanted view or visual impacts on neighboring properties.

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 letters have been received regarding the subject application.

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 wishes to approve the project, Staff would recommend that the attached conditions of approval be applied.

ATTACHMENTS

1. Conditions of approval
2. Application and supplemental materials
3. Submitted plans

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CONDITIONS OF APPROVAL

5 VIA CAPISTRANO

FILE #20614

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 to the application received by the Town of Tiburon on April 19, 2006, or as amended by these conditions of approval. Any modifications to the plans of April 19 and May 5, 2006 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. 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.