

# Town of Tiburon STAFF REPORT

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



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TO: **PLANNING COMMISSION**

FROM: **PLANNING MANAGER WATROUS**

SUBJECT: **ZONING ORDINANCE TEXT AMENDMENTS: MODIFY SITE PLAN AND ARCHITECTURAL REVIEW REQUIREMENTS FOR MECHANICAL EQUIPMENT, EXTERIOR LIGHTING AND SAFETY RAILINGS; AMEND DEFINITIONS FOR "FLOOR AREA RATIO" AND "WET BARS"; FILE NO. Z2006-01**

MEETING DATE: **JANUARY 25, 2006** \_\_\_\_\_

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## **BACKGROUND**

During the course of reviewing a number of Site Plan and Architectural Review applications and discussions with Tiburon residents, it has become apparent that there is a need for several amendments to the Tiburon Zoning Ordinance. In particular, there is a desire to make changes that would:

- Require design review approval for noise-generating exterior mechanical equipment;
- Include downlight requirements in principles for Design Review for exterior lighting; and
- Include safety railings on top of retaining walls in the calculation of wall heights.

Staff has prepared draft language for these three specific changes.

During the past year's Town Council-Design Review Board workshop, the need for several amendments to the Tiburon Zoning Ordinance was discussed. Issues to be addressed included:

- The need to include crawl spaces and areas beneath cantilevered spaces under the definition of floor area; and
- The need for a definition of a "wet bar" that would be separate from the current definition of a kitchen.

Staff has also prepared draft language for these two changes.



# Town of Tiburon

## STAFF REPORT

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### ANALYSIS

#### Mechanical Equipment

Section 4.02.02 (a) of the Tiburon Zoning Ordinance (Section 16-4.02.02 (a) of the Tiburon Municipal Code) requires Site Plan and Architectural Review approval for construction of any "structure," which is defined as follows:

**"Structure:** Anything that is built or constructed and requires a location on the ground, including a building, accessory building, or edifice of any kind; or any piece of work artificially built up or composed of parts. Structure does not include a fence or a wall used as a fence three and one-half (3½) feet or less in height; nor landscaping features, decks, or pavement wherein no part of said landscaping features, decks, or pavement extends more than three (3) feet above grade."

Exterior air conditioning units and many other pieces of exterior mechanical equipment normally associated with residences are not specifically included in this definition, and are often less than 36 inches in height. Although the location of such equipment rarely results in unwanted visual impacts due to their relatively low height, the Town sometimes receives complaints from neighboring residents about noise generated by the equipment when installed in inappropriate locations. Placement of noisy equipment near property lines or below bedroom windows of adjacent residences can result in unwanted noise impacts for these neighbors. It seems appropriate that the proposed location of such equipment be reviewed as part of the Site Plan and Architectural Review process.

Specific setback standards for noise-generating equipment may not be appropriate. Site characteristics such as topography and the location of bedrooms or other quiet spaces for neighboring homes need to be considered in determining the most appropriate location for such equipment.

In order to establish Site Plan and Architectural Review for noise-generating exterior equipment, the following changes to the Zoning Ordinance are suggested:

Section 16-4.02.02 (c) would be amended to require Site Plan and Architectural Review approval for:

- (c) "Placement or installation of swimming pools and/or spas; **installation or relocation of exterior air conditioning or heating (HVAC) units, generators or similar noise-generating mechanical equipment;** ~~placement or erection of solar panels,~~ satellite dishes greater than one meter in diameter, skylights, and/or devices of a similar nature, as determined by the Planning Director or his designee. (Please note that the placement of signs does not require Site Plan & Architectural Review, but does require a "sign permit", pursuant to Chapter 16A of the Tiburon Town Code.)"



# Town of Tiburon

## STAFF REPORT

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Section 16-4.02.06 (Planning Director as Acting Body on Applications for Minor Alterations) would be modified as follows:

“Site Plan & Architectural Review applications for the following items are considered to be Minor Alterations and may be acted upon by the Planning Director or his designee in lieu of the Design Review Board:

- a. Residential additions less than 500 square feet in floor area.
- b. Accessory buildings or structures less than 500 square feet in floor area.
- c. Fences, walls, and/or retaining walls.
- d. Minor exterior alterations such as windows, decks, skylights, ~~solar panels~~, satellite dishes, and similar items as determined by the Planning Director.
- e. Re-roofs.
- f. Swimming pools.
- g. Spas.
- h. **Installation or relocation of exterior air conditioning or heating (HVAC) units, generators or similar noise-generating mechanical equipment.**
- i. Modifications to approved Site Plan & Architectural Review permits when determined to be minor in nature.
- j. Other applications which the Planning Director determines to be appropriate for Staff action.”

In order to ensure that the appropriate location of noise-generating mechanical equipment is considered in the review of Site Plan and Architectural Review applications, Section 16-4.02.07 (b) (Guiding Principles in the Review of Applications) would be amended to read as follows:

“In reviewing applications for Site Plan & Architectural Review, the acting body shall consider the following principles as they may apply:

- (b) *“Site Layout in Relation to Adjoining Sites.* The location of proposed improvements on the site in relation to the location of improvements on adjoining sites, with particular attention to view considerations, privacy, **location of noise-generating exterior mechanical equipment,** adequacy of light and air, and topographic or other constraints on development imposed by particular site conditions;”

### Exterior Lighting

Over the past ten years or more, the Planning Division and Design Review Board have consistently imposed a condition of approval on Site Plan and Architectural Review applications stating that “All exterior lighting fixtures other than those approved by the Design Review Board must be down light type fixtures.” The only reference to lighting issues for Design Review applications contained in the Zoning Ordinance is Section 16-4.02.07 (h) (Guiding Principles in the Review of Applications), which currently reads as follows:



# Town of Tiburon

## STAFF REPORT

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“In reviewing applications for Site Plan & Architectural Review, the acting body shall consider the following principles as they may apply:

- (h) “*Lighting*. Proposed lighting, insofar as it should not invade the privacy of other properties, or produce glare or light pollution; yet provide adequate illumination for safety and security purposes. The acting body may impose a condition that following issuance of a certificate of occupancy or final building inspection, all exterior lighting shall be subject to a 30-day light level review by the Planning Department to ensure conformance with this guideline.”

In order to more properly emphasize the importance of downlighting for new exterior lighting fixtures, Staff recommends adding the phrase “all proposed exterior lighting shall be shielded downlighting” to the end of this section.

The uniform requirement for downlight fixtures has been used as a means to insure that new lighting does “not invade the privacy of other properties, or produce glare or light pollution; yet provide adequate illumination for safety and security purposes.” Town Staff has rarely conducted a “30-day light level review” as a means of determining whether lighting levels are appropriate, as the requirement to install downlight fixtures has done an adequate job of ensuring conformance with this principle.

It is therefore recommended that Section 16-4.02.07 (h) be amended to read as follows:

- (h) “*Lighting*. Proposed lighting, insofar as it should not invade the privacy of other properties, or produce glare or light pollution; yet provide adequate illumination for safety and security purposes. ~~The acting body may impose a condition that following issuance of a certificate of occupancy or final building inspection, all exterior lighting shall be subject to a 30-day light level review by the Planning Department to ensure conformance with this guideline.~~ **All proposed exterior lighting shall be shielded downlighting.**”

### Safety Railings

The Uniform Building Code (UBC) requires that a three foot (3') tall safety railing be installed on or near most retaining walls over three feet in height to prevent people walking near such walls from falling off the edge to a level below. When this railing is placed on top of the wall, the overall height of the structure is measured as the plumb vertical distance between the natural or finished grade (whichever is lower) at the base of the wall to the top of the railing. As walls and fences have a maximum height of six feet (6') when located within required setbacks, the safety railing often has the effect of increasing the measured height of the combined wall and railing to more than 6 feet. Such occasions have resulted in numerous recent requests for variances for excess wall and fence height.



# Town of Tiburon

## STAFF REPORT

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The Town has adopted an administrative policy that states that:

“If two or more fences or walls are constructed with a horizontal separation of three feet (3’) or less between the faces of the structures, the height of the respective structures shall be combined to determine the total wall or fence height. However, if the walls and/or fences are separated by a horizontal distance greater than three feet (3’), the heights of the structures shall be calculated separately.”

In order to avoid variance requests, many owners have chosen to follow this policy and place the required safety railing 3 feet behind the top of their retaining walls. However, this has resulted in safety railings that often cut through landscaped areas behind these walls; such railings are aesthetically unattractive, unnecessarily reduce the size of the landscaped area, and increase the likelihood that someone will walk between the railing and the wall and fall off the wall. The Building Official has observed such installations and has concerns that the resulting railings are inconsistent with the intent of the UBC to ensure the safety of residents and guests on these properties.

In order to address these issues, it is recommended that Section 16-5.06.04 (b[2]) (Yard Regulations) be amended to read as follows:

- (b) “Fences, walls, hedges, walks, driveways, and garage aprons and similar paved areas may occupy any required yard, provided that: ...
  - 2. A fence, wall, or retaining wall shall not exceed six (6) feet in height in any yard, unless all of the following conditions are met:
    - a. The fence and/or wall is located along a private residential property line shared with another private residential property;
    - b. There is a difference in surface elevation between the two adjoining properties along the property line upon which the proposed fence and/or wall is to be located;
    - c. The fence and/or wall would have a maximum height of six (6) feet on the upper side of the structure; and a maximum height on the lower side of the structure of six (6) feet plus the difference in surface elevation between the adjoining yard areas at the property line, but in no instance more than nine (9) feet;
    - d. The Acting Body determines that a fence and/or wall with a height of six (6) feet on the lower side of

# Town of Tiburon

## STAFF REPORT

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the structure would not provide an effective privacy screen for the adjoining properties; and

- e. The Acting Body determines that the proposed fence would not result in significant view obstruction or visual impacts on properties in the vicinity.

**A safety railing on top of a retaining wall as required by the Uniform Building Code shall not count toward the measured height of the retaining wall if the Building Official determines that the location of the railing is necessary for safety purposes. Site Plan & Architectural Review approval shall be required for such railings and walls as provided in Section 16-4.02.00 of this Chapter. Such railings are encouraged to be constructed either of transparent materials or be otherwise visually open in design.**

### Crawl Spaces and Cantilevered Spaces

The definition of "Gross Floor Area" contained within the Tiburon Zoning Ordinance reads as follows:

"The sum of all enclosed or covered areas of each floor of the building, measured to the exterior faces of the enclosing walls, columns, or posts. NOTE: The term 'capable of being used or finished for habitable space' is used below. A space shall be considered 'capable of being used or finished for habitable space' if it meets Uniform Building Code occupiable ceiling height requirements and is all of the following:

- (a) Covered by a solid, weatherproof roof or floor.
- (b) At least 50 percent of the vertical area around the space is closed.
- (c) Supported on a structural floor or slab capable of sustaining floor loads."

This definition also lists these spaces specifically included as floor area:

- (1) Unfinished loft spaces and other areas capable of being used or finished for habitable space.
- (2) Other roofed or covered spaces (such as breezeways, balconies, porches, or similar spaces) which are capable of being used or finished for habitable space, if less than fifty (50) percent of the vertical area around the space is fully open.
- (3) Roof penthouses; mezzanine floor areas; and accessory buildings.

In recent years, concerns have been raised about large crawl space areas beneath existing and proposed dwellings that have the potential to be converted into floor area in the future. Similar



# Town of Tiburon

## STAFF REPORT

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concerns have also been raised recently about space beneath a cantilevered portion of upper level floor area that could also eventually be finished as floor area. In each of these cases, the Design Review Board has been concerned that homes with such crawl spaces or cantilevered areas have the overall mass and bulk of homes with much larger floor areas; in many cases, such dwellings have been designed at their maximum floor area under the current code definition, but have the potential for future easily finished space that would push the house over the floor area ratio for its lot.

Section 16-4.02.08 of the Tiburon Zoning Ordinance states that the intent of the Floor Area Ratio Guidelines is “to provide a ‘community yardstick’ for appropriate residential size and scale, measured in gross square footage, in relation to the overall size of property on which the improvements are proposed.” In order to recognize that excessive crawl spaces and areas beneath cantilevered building elements contribute the overall “size and scale” of dwellings, it is recommended that the following changes be made to the definition of “Gross Floor Area”:

1. Delete the requirement that floor area be “supported on a structural floor or slab capable of sustaining floor loads.” This would allow crawl spaces, which seldom have floors, to be included in the overall definition of gross floor area.
2. Add a definition of “*crawl space*” as “*an open area between the floor of a building and the ground.*”
3. Add a definition of “*cantilevered*” as “*an overhang where a floor, deck, balcony or other horizontal projection extends beyond a foundation wall or other floor level and is unsupported at the extended end.*”
4. Add the following sections to the list of spaces specifically included as floor area:
  - (4) *All crawl space area with a minimum height of seven (7) feet when measured from finished or natural grade (whichever is lower) to the bottom of the floor above. This definition shall only apply to crawl space created after [the effective date of this ordinance].*
  - (5) *All space with a minimum height of seven (7) feet beneath a cantilevered portion of other floor area of a house. This definition shall only apply to such space created after [the effective date of this ordinance].*

### Wet Bars

The Town has recently received a number of requests to establish a wet bar area in homes, usually consisting of a sink, refrigerator, microwave oven and associated counter space and cabinets. Such improvements would meet the Town’s current definition of a kitchen:

**Kitchen:** Any portion of a structure with a combination of two (2) or more of the following: a) sink (other than that associated with a bathroom); b) food storage and preparation areas; c) refrigerator; or d) cooking appliances including a stove, microwave



# Town of Tiburon

## STAFF REPORT

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oven, convection oven, cooking burners, hot plate or similar appliances that reasonably may be used for the preparation of food.

As the definition of a “dwelling unit” is “one or more rooms, including a kitchen and sanitary facilities, occupied for living and sleeping purposes by not more than one family,” a wet bar is considered to be a second kitchen in a house, resulting in the structure being deemed to be a second dwelling unit. Some homeowners have chosen to seek approval of a wet bar as a kitchen for a secondary dwelling unit, without necessarily intending to use that area of the house as a separate dwelling unit.

The intent of the restrictive kitchen definition is to discourage interior improvements that could lead to the establishment of illegal additional dwelling units. The intent of most wet bar requests is not to foster a second dwelling, but simply to provide limited food storage and preparation facilities that support the entertainment of residents and guests in or near family rooms, pool rooms, media rooms and recreation rooms.

In order to recognize that a wet bar, if limited in scope, can be an acceptable improvement for a residence, it is recommended that the following definition be created:

**Wet Bar:** A portion of a structure, other than a kitchen, with a combination of two (2) or more of the following: a) sink (other than that associated with a bathroom); b) food storage and preparation areas; c) refrigerator (of no more than six (6) cubic feet capacity) d) microwave oven; or e) hot plate. Other cooking appliances, including a stove, convection oven, cooking burners, or similar larger appliances that reasonably may be used for the preparation of food are not permitted as part of a wet bar.

In order to protect against requests to establish a wet bar that has a higher potential for being illegally converted into a second dwelling unit, it is recommended that the definition also include the following:

A wet bar may be classified as a kitchen if the Planning Director determines that the wet bar is in a portion of the house with a separate access to exterior of the building that has the potential for conversion into a separate dwelling unit.

### REVIEW BY DESIGN REVIEW BOARD

The Design Review Board reviewed the proposed floor area ratio and wet bar definitions on September 15, 2005 and the proposed revisions to the requirements for mechanical equipment, lighting and safety railings on January 19, 2006. The Board supported the changes, and recommended inclusion of power generators in the list of noise-generating equipment, and a suggestion that safety railings on top of retaining walls be either made of transparent materials or be visually open in character.



# Town of Tiburon

## STAFF REPORT

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### ENVIRONMENTAL REVIEW

All of the proposed amendments considered herein are either exempt from CEQA pursuant to Section 15061 [b(3)].

### FUTURE ACTIONS REQUIRED

The Planning Commission will make a recommendation to the Town Council regarding the possible adoption of these amendments. A subsequent public hearing will be scheduled for the Town Council to take final action on these amendments.

### RECOMMENDATION

It is recommended that the Planning Commission:

1. Hold a public hearing and discuss the proposed text amendments to the Tiburon Zoning Ordinance; and
2. Adopt the attached resolution recommending approval of these amendments to the Town Council.

### EXHIBITS

1. Draft resolution
2. Minutes of the September 15, 2005 Design Review Board meeting