



Town of Tiburon

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and a revision to the building permit was issued on July 15, 2005. A third building permit revision was submitted on October 24, 2005; however, the building official required all work to be stopped on the walls since it appeared that the walls were taller and differently located than shown on the approved design review and building permit plans. The applicant is now requesting Site Plan and Architectural Review approval to legalize the over-height walls and fence.

The subject walls were ultimately constructed with a height ranging from 3 feet, six inches up to 7 feet, 2 inches not including safety railings. The side yard fence has a maximum height of 6 feet, 8 inches. Both the fence and the lower retaining wall exceed the maximum wall and fence height within a required setback. Therefore a Variance for excess wall and fence height is now requested (7 feet, 2 inches in lieu of the maximum 6 feet).

ANALYSIS:

Design Issues

In an attempt to stabilize the slope, the applicant constructed two rows of retaining walls running for approximately 80 linear feet. The lower wall ranges from 4 feet to 7 feet, 2 inches. The upper wall ranges from 3 feet, 6 inches to 5 feet, 2 inches. The lower wall is highly visible to the downhill properties due to the close proximity to the property line. Goal 1, Principle 7 of the Hillside Design Guidelines discourages the use of large retaining walls in a uniform plane and instead recommends breaking walls into terraces or into several smaller retaining walls.

The side yard fence that runs below the subject walls is redwood and has a maximum height of 6 feet, 8 inches. The subject fence is also highly visible to the downhill properties; however, the fence should not interfere with any significant views from nearby homes. The Design Review Board should determine whether the location and size of the over height fence and walls would result in an undesirable visual impact on the downhill properties.

Zoning

Staff has reviewed the proposal and finds it to be in conformance with the development standards for the RO-2 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.**



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The subject property slopes steeply from east to west creating the need for substantial slope retention on the downhill side of the existing pool area on the property. In order to stabilize the slope, substantial retaining walls are necessary. Therefore, there is a special circumstance that deprives the applicant of privileges enjoyed by other properties in the same zone.

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.

Other properties in the vicinity and other properties in the RO-2 zone have received variances for excess wall and fence height in areas where the topography of the site would make a six foot fence wall inadequate to meet the normal slope stabilization 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 slope stabilization for the property, substantial retaining walls are required. The strict application of the Ordinance in this case would require significantly more walls and may not allow for adequate slope stabilization, which 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 walls and fence would appear to improve the safety of the slope for other properties in the vicinity, but they may result in unwanted view or visual impacts on neighboring properties. Therefore, the granting of this Variance could result in significant impacts detrimental to the public welfare or injurious to other properties in the vicinity due to the negative aesthetic impacts of the large retaining walls.

From the evidence provided, Staff believes that there is insufficient evidence to support the findings for the requested variance.

Public Comment

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

RECOMMENDATION:

It is recommended that the Board 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 15301. If the Board agrees with Staff's conclusions, the application should be continued with the applicant encouraged to return with a revised project consistent with the Hillside Design Guidelines. If the Board wishes

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to approve the project, findings should be articulated for the requested Variance and Staff would recommend that the attached conditions of approval be applied.

EXHIBITS:

1. Conditions of Approval
2. Application and supplemental materials dated September 6, 2005.
3. Plans for the proposed project.

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EXHIBIT 1

CONDITIONS OF APPROVAL 177 STEWART DRIVE FILE #20555

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 December 22, 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.