



TOWN OF TIBURON
1505 Tiburon Boulevard
Tiburon, CA 94920

Design Review Board Meeting
May 19, 2011

Agenda Item: **1**

STAFF REPORT

To: Members of the Design Review Board
From: Planning Manager Watrous
Subject: 65 Reed Ranch Road; File #711011
Site Plan and Architectural Review for the Construction of Additions to an Existing Single-Family Dwelling (Continued from April 21, 2011)
Reviewed By: _____

BACKGROUND

March 17, 2011 Meeting

On March 17, 2011 the Design Review Board reviewed an application for construction of an addition to an existing single-family dwelling on property located at 65 Reed Ranch Road. The project proposed to construct a new garage to be attached to the existing house and include a laundry room and bathroom. A second story storage loft was also proposed with a new entry deck and stairs to connect the second story loft to the front of the home.

At that meeting, the owners of the adjacent home to the west at 67 Reed Ranch Road raised objections to the proposed project. They were concerned about the proximity and visual mass and bulk of the proposed addition, along with potential noise and privacy impacts.

The Design Review Board shared many of these concerns, particularly regarding the visual mass of the building and its proximity to the home at 67 Reed Ranch Road. The Board suggested that the height of the addition possibly be reduced, that the applicant consider other less sensitive locations for the addition, and more be done to properly attach the addition to the main building. The Board continued the application to the April 21, 2011 meeting to allow the applicant time to redesign the proposed addition.

April 21, 2011 Meeting

At the April 21, 2011 meeting the Design Review Board reviewed revised plans for the project. The proposed addition was moved to the east, away from 67 Reed Ranch Road. The existing detached garage at the northeast corner of the lot was to be demolished and replaced with a new three-car garage, with a workshop space at the rear of the garage. The upper floor of the addition would include a guest bedroom and a model train room. The upper level of the addition would be situated at the same level as the existing deck in front of the house. The upper level would connect to the interior of the main level of the house at the family room, with an interior stairway

leading down to the lower level of the addition. The workshop space would be separated from the western side of the addition by a doorway and hallway area.

It was the consensus of the Board that the project was generally responsive to the previously raised concerns. However, the Board still had issues with the overall height and visual mass of the proposed addition, particularly the “monitor” section above the upper floor addition, and the amount and/or pattern of windows. The Board gave direction to the applicant on modifications that could possibly address these concerns and continued the application to the May 5, 2011 meeting to allow the applicant time to once again redesign the proposed addition.

Prior to the May 5 meeting, the applicant indicated to Staff that the owners intended to request the Design Review Board to reconsider its findings regarding the plans reviewed at the April 21 meeting. On May 4, the applicant instead requested a continuance to the May 19, 2011 Board meeting.

ANALYSIS

The applicant has now submitted revised project plans. The monitor section of the proposed upper floor addition has been narrowed and reduced in height by 6 inches. The number and area of the windows and openings on the western side of the addition, facing the adjacent home at 67 Reed Ranch Road, have been reduced; the glass area of the top row of west-facing windows on the monitor would each be only 12 inches wide and 7-5/8 inches tall. Minor changes have been made to the overall dimensions of the proposed addition, most amounting to changes of less than one foot. The roof design of the upper floor has been modified to connect more seamlessly with the roofline of the existing house.

The revised project design would have the same floor area as the previous design, but would increase the lot coverage by 10 square feet to a total of 2,676 square feet (14.3%), which would be less than the 15.0% maximum lot coverage for a lot of this size and 98 square feet less than the original application.

The revised project design appears to be responsive to the concerns raised by the Design Review Board. The revisions would lessen the height and visual mass of the monitor, lessen the amount of window area, and provide a more architecturally sound connection of the addition to the existing house.

RECOMMENDATION

The Board should review this project with respect to Zoning Ordinance Sections 16-52.020 (H) (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 Design Review Board agrees with Staff’s conclusions, it is recommended that the attached conditions of approval be applied.

ATTACHMENTS

1. Conditions of approval
2. Design Review Board Staff Report dated March 17, 2011
3. Design Review Board Staff Report dated April 21, 2011
4. Minutes of the March 17, 2011 Design Review Board meeting
5. Minutes of the April 21, 2011 Design Review Board meeting
6. Submitted plans

CONDITIONS OF APPROVAL

65 REED RANCH ROAD

FILE #711011

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 with the application dated by the Town of Tiburon on January 24, 2011, or as amended by these conditions of approval. Any modifications to the plans of May 9, 2011 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.
5. The applicant must meet all requirements of other agencies prior to the issuance of a building permit for this project.
6. All exterior lighting fixtures other than those approved by the Design Review Board must be down light type fixtures.
7. The project shall comply with the following requirements of the Southern Marin Fire Protection District:
 - a. The proposed additions shall have installed throughout an automatic fire sprinkler system.

- b. The address shall be posted in accordance with the requirements of the California Fire Code.
 - c. Smoke detectors shall be installed in accordance with the requirements of the California Fire Code.
 - d. Noncombustible roofing materials shall be utilized.
 - e. The applicant shall comply with California Fire Code and Public resource Code 4291 requirements relating to the clearance of flammable brush and weeds. A minimum clearance of thirty feet (30') from structures and ten feet (10') from roads and property lines shall be maintained.
8. All requirements of the Marin Municipal Water District shall be met.
9. The applicants shall obtain any necessary sewer permits from the Richardson Bay Sanitary District and pay all applicable fees prior to construction of a side sewer and connection to the sewer main. After connection to the sewer main but prior to commencement of discharge and prior to covering of the pipe, the District shall be contacted and allowed to inspect the connection for conformance to standards.
10. All requirements of the Town Engineer shall be met, including, but not limited to, the following, which shall be noted on building plan check plans:
- a. A Public Works encroachment permit will be needed for construction movement to and from the private shared driveway and to control construction staging and parking.
 - b. The public right-of-way shall be protected from damage during construction, or repairs shall be made to the satisfaction of the Tiburon Public Works Department.



TOWN OF TIBURON
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Design Review Board Meeting
May 19, 2011

Agenda Item: **2**

STAFF REPORT

To: Members of the Design Review Board

From: Planning Manager Watrous

Subject: 19 Apollo Road; File #21105
Site Plan and Architectural Review for the Construction of Additions to an Existing Single-Family Dwelling, with a Variance for Excess Lot Coverage

Reviewed By: _____

PROJECT DATA

ADDRESS: 19 APOLLO ROAD
ASSESSOR'S PARCEL: 034-262-22
FILE NUMBER: 21105
PROPERTY OWNERS: MICHAEL AND CATHERINE SOPER
APPLICANT: HOLSCHER ARCHITECTURE
LOT SIZE: 6,860 SQUARE FEET
ZONING: R-1 (SINGLE-FAMILY RESIDENTIAL)
GENERAL PLAN: MEDIUM HIGH DENSITY RESIDENTIAL
FLOOD ZONE: X
DATE COMPLETE: APRIL 27, 2011

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 Design Review approval for the construction of additions to an existing one-story single-family dwelling on property located at 19 Apollo Road. A new family room would be constructed to the rear of the existing kitchen. The existing two-car garage would be expanded toward the front to allow room for a new laundry room. A new covered entry would be added to the front of the house.

The proposed additions would increase the gross floor area of the house by 491 square feet to a total of 1,874 square feet, which is less than the floor area ratio for a lot of this size. The proposed additions would increase the calculated lot coverage on the site by 455 square feet to a total of

2,269 square feet (33.1%), which is greater than the 30.0% maximum lot coverage allowed in the R-1 zone. A variance is therefore requested for excess lot coverage.

A color and materials board has not been submitted, as the exterior colors and materials of the proposed additions would match those of the existing house.

ANALYSIS

Design Issues

The subject property is a rectangular lot in the middle of the Belveron East neighborhood. As with most lots in the vicinity, the site is level and the house is situated at roughly the same elevation as the surrounding homes.

The proposed addition would be primarily visible to the adjacent home to the east at 21 Apollo Road. A 6 foot tall wooden fence is situated along the shared side property line with the neighboring property and there is mature vegetation on both sides of the property line. The fence and vegetation should adequately screen views of the proposed addition from the few windows along the side of the adjacent house that would face the addition.

The height of the proposed addition would not exceed the height of the existing house. The proposed additions would comply with the required setbacks for the R-1 zone. By adding moderately sized additions to the front and rear of the house, the project would not substantially increase the overall visual mass of the house when viewed from other nearby homes.

Zoning

Staff has reviewed the proposal and finds that it is in conformance with the development standards for the R-1 zone, with the exception of the requested variance for excess lot coverage.

Variance

In order to grant the requested variance, the Board must make all of the following findings required by Section 16-52.030 (E) 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 6,860 square foot size of the subject property is considerably smaller than the 10,000 square foot minimum lot size in the R-1 zone. The small size of the lot creates special circumstances that would deprive the owners of this property of development 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 R-1 and similar zones have been granted variances for excess lot coverage, particularly for additions that retain a one-story home design.

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

The strict application of the maximum lot coverage requirement for this property would either require the construction of a second story addition that could be inconsistent with the character of the surrounding Belveron East neighborhood or would limit the floor area for a house on this lot to a level substantially below the allowable floor area ratio for a lot of this size. These building limitations would result in a practical difficulty 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 described above, the proposed additions would not project into the views of or create privacy impacts for any neighboring residences.

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 this application.

RECOMMENDATION

The Board should review this project with respect to Zoning Ordinance Sections 16-52.020 (H) (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 Design Review Board agrees with Staff's conclusions, it is recommended that the attached conditions of approval be applied.

ATTACHMENTS

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

CONDITIONS OF APPROVAL

19 APOLLO ROAD

FILE #21105

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 with the application dated by the Town of Tiburon on March 22, 2011, or as amended by these conditions of approval. Any modifications to the plans of April 7, 2011 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.
5. The applicant must meet all requirements of other agencies prior to the issuance of a building permit for this project.
6. All exterior lighting fixtures other than those approved by the Design Review Board must be down light type fixtures.
7. The project shall comply with all requirements of the Southern Marin Fire Protection District:
8. All requirements of the Marin Municipal Water District shall be met.
9. All requirements of the Town Engineer shall be met



TOWN OF TIBURON
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Design Review Board Meeting
May 19, 2011
Agenda Item: **3**

STAFF REPORT

To: Members of the Design Review Board
From: Associate Planner Tyler
Subject: Site Plan and Architectural Review for the Construction of an Addition to an Existing Single-Family Dwelling
Reviewed By: _____

PROJECT DATA

OWNER: ELIZABETH & BRIAN WILHELM
APPLICANT/ARCHITECT: HOLSCHER ARCHITECTURE
ADDRESS: 110 LYFORD DRIVE
ASSESSOR'S PARCEL NUMBER: 058-232-04
FILE NUMBER: 711046
LOT SIZE: 24,999 SQUARE FEET
ZONING: RO-2 (SINGLE-FAMILY RESIDENTIAL-OPEN)
GENERAL PLAN: M (MEDIUM DENSITY RESIDENTIAL)
FLOOD ZONE: X
DATE COMPLETE: APRIL 27, 2011

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.

PROJECT DESCRIPTION

The applicant is proposing to construct additions to the existing single-family dwelling located at 110 Lyford Drive by converting the existing garage into living space. Currently the property is improved with a two-story dwelling.

The main level of the home includes the living room, dining room, den, kitchen, breakfast nook, master bedroom suite and a powder room. An existing deck is located off the den area. The lower level of the home includes a bedroom, bathroom, study area, utility room, and three-car garage with storage areas.

As part of a remodel of the existing lower level storage areas, the 600 square foot garage would be converted into living space and incorporated into the remodel of the existing storage areas.

The remodeled lower level would include two bedrooms, a playroom and a bathroom. A new covered porch would also be constructed at the lower level. No major improvements are proposed for the main level of the home, with the exception of new windows and doors, a new gas fireplace in the den, and the installation of a cupola above the breakfast nook.

The proposed additions would increase the floor area by 600 square feet, for a total gross floor area of 4,472 square feet, which is below the maximum permitted gross floor area for the property (4,499.9 square feet). The proposed covered porch would increase the lot coverage by 200 square feet, for total lot coverage of 3,072 square feet (12.3%), which is below the maximum permitted lot coverage in the RO-2 zone (15.0%).

The façade of the home would be modified as part of the proposal. The existing shingles would be painted gray and the exterior trim and window trim would be painted white. A new dark grey composition shingle roof would also be installed. A color/materials board will be available at the meeting for review by the Board.

ANALYSIS

Design Issues

The subject site is designed to take advantage of views to the south of San Francisco and the Golden Gate Bridge. The conversion of garage space and overall remodel at the lower level of the home would not be visible or affect any of the adjacent neighbors. However, the proposed new chimney and new cupola at the main level of the home would result in new projections above the existing roofline and would be visible from the living areas of the residence above the subject site at 112 Lyford Drive.

The primary views for 112 Lyford Drive are similar to 110 Lyford Drive, but the views look over the subject site. The existing chimney currently projects up into views of Belvedere. The new chimney and cupola would also project similarly into views of Belvedere, but not any higher than the existing chimney. These view infringements can be considered minor, in comparison to the larger panoramic views of San Francisco and the Golden Gate Bridge.

In order to convert the 600 square foot garage into living space, a replacement garage or carport of equal or greater capacity must be provided on the property. However, the Town has a garage conversion policy that a replacement garage or carport may not be required if specific criteria can be met. Staff has reviewed the proposed project in relation to these specific criteria and has found that the proposal would be in compliance with this policy. The subject site contains an adequate parking area at the front of the home which is screened from view due to the slope of the driveway off Lyford Drive. The home also has additional storage areas for items that would normally be stored in a garage, such as bicycles or landscape equipment. In addition, the subject site is fairly large, which would allow for the future construction of a new garage or carport that would still meet the standard zoning requirements for the RO-2 zone, and would also not require a variance.

Staff does not foresee any other design issues.

Zoning

Staff has reviewed the proposal and finds that it is in conformance with the remaining development standards for the RO-2 zone.

Public Comment

As of the date of this report no letters have been received regarding the subject application.

RECOMMENDATION

Staff recommends that the Board:

1. Review the project with respect to Zoning Ordinance Section 16-52.020(H) (Guiding Principles); and
2. Determine that the project is exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15301; and
3. Approve the project, subject to the attached conditions of approval.

- Exhibits:
1. Conditions of Approval
 2. Application and Supplemental Materials
 3. Town Policy Regarding Garage/Carport Conversions
 4. Submitted Plans

Prepared By: Laurie Tyler, Associate Planner

Exhibit 1

CONDITIONS OF APPROVAL
FILE NO. 711046
110 LYFORD DRIVE

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. Construction shall conform with the application and plans dated by the Town of Tiburon on April 7, 2011, or as amended by these conditions of approval and plans of April 7, 2011. Any modifications to the plans must receive Design Review approval.
3. Project elements shown on construction drawings submitted to the Building Division for plan check shall be essentially identical to those project elements shown on drawings approved by the Design Review Board. The permit holder is responsible for clearly identifying on construction drawings any and all changes to project elements. Such changes must be clearly highlighted (with a "bubble" or "cloud") on the construction drawings. A list describing in detail all such changes shall be submitted and attached to the construction drawings, with a signature block to be signed by the Planning Division Staff member indicating whether these changes have been reviewed and are approved, or will require additional Design Review approval. All such changes that have not been explicitly approved by the Town are not "deemed approved" if not highlighted and listed on construction drawings. Construction of any such unapproved project elements is in violation of permit approvals and shall be subject to Stop Work Orders and removal.
4. The applicant must meet all requirements of other agencies prior to the issuance of a building permit for this project.
5. All skylights shall be bronzed or tinted in a non-reflective manner (minimum 25%) and no lights shall be placed in the wells.
6. All exterior lighting fixtures other than those approved by the Design Review Board must be down-light-type fixtures.
7. 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.

8. A construction sign shall be posted on the site during construction of the project, in a location plainly visible to the public. The sign shall be 24" x 24" in size and shall be made of durable, weather-resistant materials intended to survive the life of the construction period. The sign shall contain the following information: job street address; work hours allowed per Chapter 13 of the Tiburon Municipal Code; builder (company name, city, state, ZIP code); project manager (name and phone number); and emergency contact (name and phone number reachable at all times). The sign shall be posted at the commencement of work and shall remain posted until the contractor has vacated the site.
9. All requirements of the Director of Public Works/Town Engineer shall be met. An encroachment permit shall be filed and issued with the Town of Tiburon Public Works Department, for all work to be conducted within Town right-of-way, or Town-owned land, as defined in Chapter 19 of the Tiburon Municipal Code.
10. The project shall comply with the following requirements of the California Fire Code and the Tiburon Fire Protection District:
 - a) The structure shall have installed throughout an automatic fire sprinkler system. The system design, installation and final testing shall be approved by the District Fire Prevention Officer. CFC 903.2
 - b) Approved smoke alarms shall be installed to provide protection to all sleeping areas. CFC 907.2.10
 - c) The vegetation on this parcel shall comply with the requirements of the Tiburon Fire District and the recommendations of Fire Safe Marin. CFC 304.1.2 A maintenance plan discussing changes to and maintenance of the current vegetation shall be submitted and approved by the Fire District, prior to issuance of building permits.
 - d) The access gate shall maintain a minimum unobstructed width of 12'. The gates shall be operable using the Fire District's "Knox" key system. CFC 503.6.2
11. The proposed chimney for the new gas fireplace shall not be higher than the minimum permitted height required by the fire code.



TOWN OF TIBURON
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Design Review Board Meeting
May 19, 2011

Agenda Item: **4**

STAFF REPORT

To: Members of the Design Review Board
From: Planning Manager Watrous
Subject: Study Session on Variances and Findings
Reviewed By: _____

BACKGROUND

As part of the Town's ongoing training for its Boards and Commissions, Town Staff has been directed to schedule regular study sessions on various issues. A variance and findings study session was held for the Design Review Board in 2008. A similar updated study session has now been scheduled for the Board.

ANALYSIS

The Design Review Board hears nearly all variance applications filed with the Town, and the Town Council must occasionally review those applications on appeal. The study session is intended to provide useful information to the Board and provide insights into the thought processes used to evaluate variances and formulate findings for them.

The study session will also touch upon the basics of "findings" associated with development applications in general. These findings tend to be of a more general nature (usually focusing on compatibility of use and consistency with plans and policies) than those findings associated with variance applications, which are typically driven by site-specific characteristics. However, Staff believes that many of the basic rules of preparing adequate findings can be equally applied to applications acted upon by the Design Review Board, and that the study session will be of benefit for that reason alone.

ATTACHMENT

1. Legal Responsibilities of Tiburon Design Review Boardmembers in Considering Design Review and Variance Applications
2. Basics of Findings and Variance Findings

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LEGAL RESPONSIBILITIES OF TIBURON DESIGN REVIEW BOARD MEMBERS IN CONSIDERING DESIGN REVIEW AND VARIANCE APPLICATIONS

Introduction

The purpose of this memo is to advise you of the legal requirements that must be met in connection with your review and decision-making on design review and variance applications. This memo also describes the parameters of permissible discretion within which you will be called on to exercise your personal judgment in fulfilling your legal responsibilities.

The Design Review Board is primarily charged with the responsibility for acting on applications for Site Plan and Architectural Review (a.k.a. design review) in Tiburon. The Board acts on all but very minor design review applications, which are handled at the staff level.

Design review applies to almost any structure or major physical improvement, new or existing, that an owner may propose to build on his property. The Board's job, put simply, is to decide whether a proposed project is consistent with the Town's Zoning Ordinance and Hillside Design Guidelines. The Zoning Ordinance gives the Board a substantial amount of discretion; however, the Board is bound by the legal constraints discussed in this memo.

Board members should review the Town's design review regulations from time to time during their tenure. In particular, Tiburon Municipal Code sections 16-52.020(H) through 16-52.020(J) set forth specific guiding principles of review that Board members must consider in acting upon a design review application. A copy of these sections is attached for your ready reference. These sections refer to the Hillside Design Guidelines and the Downtown Tiburon Design Handbook, which are other tools regularly used by the Board in its evaluation of applications.

Procedural Requirements

Each application that the Board decides must go through a formal review process; the Board holds a public meeting, considers public testimony and other evidence and makes findings. Town staff must provide appropriate notice to the applicant and nearby property owners before the Board can hold a public meeting and act on an application. Occasionally, the Board will need more than a single meeting to adequately consider and reach a decision on a particular application.

Planning staff will prepare a report on the application for you and recommend whether the Board should approve, conditionally approve, continue, or deny the proposal. Staff may include a proposed resolution with the staff report, especially if the item is controversial or staff anticipates an appeal.

By law, the Board must make specific findings before granting or denying a design review permit. After the Board concludes its consideration of each design review application, it makes its decision by a motion that adopts findings as set forth in the staff report, resolution, or as formulated by the Board at the meeting. If the Board decides to approve the application, the motion to approve should also include by reference any conditions to that approval. The motion, staff report, or draft resolution should include proposed findings and conditions. If the Board wishes, it may instruct staff to prepare and return with a resolution based upon the findings articulated during the public meeting. The Board would review that resolution at its next meeting, direct staff to make any needed changes, and adopt it by motion.

The single most important legal constraint on the Board is the findings requirement. These findings must be sufficient to enable the parties to determine whether and on what basis they should appeal the decision and/or eventually seek judicial review. In the event of an appeal or subsequent judicial review, the findings made in reaching the decision are critical to inform the Town Council or a reviewing court of the basis for the agency's action. Stated simply, it is legally necessary that you articulate how you arrived at your decision and exactly what facts and evidence you took into consideration in arriving at it. The findings necessary to grant or deny design review must comply with the design review guiding principles specified in Section 16-52.020(H), and other relevant sections of the Municipal Code.

In conducting the public meeting required, staff recommends the following simple format: The Chairman calls an item as listed on the agenda and requests a staff report or briefing; the public meeting is declared open; applicant and his representatives are invited to address the Board; the public next is invited to address the Board; rebuttal by the applicant and any person or persons opposed is then permitted; the public testimony portion of the meeting is declared closed; Board discussion next occurs and a determination is made on the application. The Board may set reasonable time limits for speakers; the agenda contains the general speaking time limit rules.

Any written matter (drawings, letters, reports, exhibits, wall graphics, etc.) brought to the meeting or referred to by any person addressing the Board should become part of the "administrative record" with any Late Mail items being considered pursuant to the Town's adopted Late Mail Policy, which is attached to each Board agenda. The "administrative record" is of crucial importance in case of judicial review, not to mention Town Council review on any appeals on the application. A reviewing court will scrutinize the record and determine whether substantial evidence in the record supports the public agency's findings and whether the findings made support the agency's decision.

Design Review and Variances

The Board will frequently encounter applications for both design review and variance as part of the same project. Frequently, the Board will encounter an application for a design review approval combined with applications for one or more variances. Design review permits and variances are separate legal entitlements, with very different requirements.

Approval of design review does not constitute a grant of a variance. These two discretionary functions of the Board are completely independent land use entitlements and ought not to be confused. One may be granted or denied without the other. Before approving such combined applications, the Board must make two separate sets of findings pursuant to two separate sets of criteria set forth in the Municipal Code. Regardless of whether you vote to approve or deny the requests, the findings must be made for the legal reasons stated earlier. On occasion, the need for a variance may disappear as the application is modified through the review process.

A variance is a permit that the Board may issue to a property owner to construct something or engage in some action not otherwise permitted under the Town's zoning regulations. Variances can, for example, relax or modify otherwise-applicable setback, height and lot coverage restrictions. State law prohibits granting a "use" variance. When considering a variance application, the Board should consider whether, on the evidence presented, it can make the necessary findings as specified in Section 16-52.030 of the Tiburon Municipal Code, attached for your ready reference. If the Board cannot make the findings, it must not issue the variance. Please note that the Municipal Code provides that deviations from floor area ratio guidelines, set forth in Section 16-52.020(I), are considered through an "exception" process that is distinct from a variance and requires significantly different findings for approval.

Please remember one important point: even if a proposed structure meets all Municipal Code requirements and requires no variances for height, setback, lot coverage, etc., it may still not meet the criteria for design review approval. As noted above, the guiding principles for design review applications are different from other criteria for approval in the Municipal Code. Design review applicants sometimes argue that the Board should approve their project because it does not require a variance. However, such projects may be entirely inappropriate under Tiburon's design review regulations. Accordingly, if you conclude that you cannot make the necessary design review findings based on the evidence before you, you can and should deny the design review application on that basis.

Precedent

Previous or similar design review approvals and/or grants of variances do not compel present approvals. A property owner seeking design review and/or a variance may sometimes argue that the approvals should be granted because similar approvals have in the past been approved by the Town for projects in the same area. This argument may continue with an assertion that to deny their design review application or their request for a variance would be unfair and discriminatory. You may legally disregard such arguments, as each application is distinct and separate as a general rule. The fact that the Board, or Council on appeal, has previously granted a variance on a property does not compel you to grant a variance for the application before you at the time; if you cannot make the necessary findings, you should deny the application, regardless of what may or may not have occurred with previous applications.

Similarly, design review approvals or denials in the past concerning other properties, even ones closely located to that of the applicant, do not compel you to act similarly now. You must always be guided by an individual separate examination of the proposal made by the applicant, tested against the legal requirements as currently specified in the Municipal Code.

You must apply the standards and criteria in existence at the time the application is before you. The fact that structures similar to the proposed structure were built legally in the past is no reason to permit such a structure to be built now. Circumstances change, and it is the present-day standards, criteria, guiding principles and surrounding conditions that must guide your deliberations.

Past design review decisions *may* have one limited point of relevance, however. Under the Municipal Code, the Board must consider, among other things, compatibility with existing development and neighborhood character. Neighborhoods can change over time. Accordingly, the Board may decide, for example, that a block that formerly consisted only of one-story dwellings is now compatible with a proposed two-story structure that would have been out of character in years past. In these uncommon situations, the Board is still not bound to follow prior decisions, but should consider the new application on its own merits in the context of the neighborhood's existing character. You need not be wedded to the past in your deliberations about whether a particular house or other structure meets the currently applicable criteria for approval.

Finally, don't be reticent to deny an application if you are unable to make the necessary findings for approval. Just be certain to recite your reasons for not being able to make a particular finding so that the record is clear.

Public Support or Opposition

Public support or public opposition to a proposed project is legally irrelevant insofar as approval or denial of an application is concerned. Every applicant deserves your open, individual, unbiased assessment as to the worthiness of his or her application for design review, variance, or any other land use entitlement that you may hear.

Not infrequently, vigorous public debate will occur concerning a particular application. Many people may appear and speak in support of or against a project. Still others may write, call, or otherwise attempt to "lobby" you. Design review and variance applications should not be granted or denied on the basis of public opinion, controversy, or the mathematically greatest number in support or opposition to an application.

The fact that an overwhelming and vocal majority oppose a project is not a legal reason to deny it. Conversely, the fact that no one opposes a project is not a legal reason to approve it. As always, you must individually weigh the proposed project against the criteria set forth in our Municipal Code, and individually make the necessary findings therein required.

Personal Taste and Judgment

There is a significant role for personal taste and judgment in design review. The guiding principles contained in Section 16-52.020(H) are designed to allow you to exercise your best judgment of which projects are appropriate in their proposed settings and which are not. Certain of the design review criteria are purposefully vague and general in nature to permit some degree of flexibility by the Board (and Council on appeal) in reviewing projects. Your job would be easier if the Municipal Code provided clear objective signposts to assist you, but your use of personal judgment is often inevitable in the course of deliberations.

On occasion an applicant will assert that his judgment on an aesthetic issue is as good as that of the Board and he should be permitted to follow his own tastes on his own project. This argument has no legal merit even though the applicant's aesthetic judgment may in fact be excellent. The Board is responsible to use its own best aesthetic judgment to assure that new construction conforms to the Town's aesthetic values, which are expressed in the design review regulations. The most beautifully designed structure imaginable may be inappropriate in the wrong setting.

The design review process is calculated to preserve and enhance community values. Through use of a properly written design review ordinance such as exists in Tiburon, and by modifying it from time to time to accurately reflect current community concerns, Tiburon can direct aesthetic and architectural standards subjectively and on a broader scope than state law or other sections of the Municipal Code would otherwise allow.

The design review criteria and guiding principles are and should be unique to Tiburon. In the future these criteria and principles may change, and you may be instrumental in effecting such a change. In the meantime, however, it is hoped that this memorandum will prove helpful to the Board members charged with the important responsibilities of regulating the design of the projects to be built in Tiburon in the years ahead.

Tiburon Town Staff
December 2010

Attachments: 1) Municipal Code Sections 16-52.020(H) through (J) (Design Review excerpts)
 2) Municipal Code Section 16-52.030 (Variance findings)

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DESIGN REVIEW BOARD TRAINING

MODULE 3



BASICS OF FINDINGS AND VARIANCE FINDINGS

Revised 5/10/2011

OUTLINE

I. Basics of Findings for Land Development Applications

- A. Circumstances Requiring Findings**
- B. Form and Adequacy of Findings**
- C. Timing and Preparation of Findings**
- D. Some Caveats**
 - 1. Scarcity of time and resources**
 - 2. Level of Controversy/Likelihood of Challenge**

II. Variance Findings

- A. Basis in California Government Code Section 65906 & 65906.5**
- B. Findings Required by Tiburon Zoning Ordinance Sections 16-52.030 (E) and (F)**
- C. Discussion of locally-required findings**
- D. Examples**
 - 1. Poorly written findings**
 - 2. Well-written findings**

III. Discussion and Questions

BASICS OF FINDINGS

I. Circumstances Requiring Findings

- A. Findings must be made if there is a specific legislative requirement for findings**
- B. Court must first determine whether Agency's decision is adjudicative or legislative**
 - 1. Findings are required when the Agency acts in an adjudicative capacity**
 - 2. Findings are not required (though often desirable) when the agency acts in a legislative capacity**

II. Form and Adequacy of Findings

- A. Each finding should be followed by a paragraph stating the evidence behind the findings and linking the raw evidence to the finding unless the finding does so itself**
 - 1. Each finding is a statement that must be supported by specific and objectively verifiable evidence**
 - 2. Evidence to support a finding may be pulled from all sources**
 - 3. Findings must explain reasons for actions**
 - 4. The reasons for the action must include facts**

- B. Conclusory, general, ambiguous or boilerplate findings without evidence are not adequate**
 - 1. Conclusory findings are insufficient evidence**
 - 2. Findings should provide supported analysis**
 - 3. Findings should clearly reveal the analytical process**

III. Timing and Preparation of Findings

- A. Adoption by reference to staff reports**
 - 1. It can also be appropriate to prepare findings following deliberation and a tentative decision, and present them later at a later meeting for adoption**
 - 2. Adoption should be by resolution**

EXCERPT FROM CALIFORNIA GOVERNMENT CODE

65905. (a) Except as otherwise provided by this article, a public hearing shall be held on an application for a variance from the requirements of a zoning ordinance, an application for a conditional use permit or equivalent development permit, a proposed revocation or modification of a variance or use permit or equivalent development permit, or an appeal from the action taken on any of those applications

(b) Notice of a hearing held pursuant to subdivision (a) shall be given pursuant to Section 65091.

65906. Variances from the terms of the zoning ordinance shall be granted only when, because of special circumstances applicable to the property, including size, shape, topography, location or surroundings, the strict application of the zoning ordinance deprives such property of privileges enjoyed by other property in the vicinity and under identical zoning classification.

Any variance granted shall be subject to such conditions as will assure that the adjustment thereby authorized shall not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and zone in which such property is situated.

A variance shall not be granted for a parcel of property which authorizes a use of activity which is not otherwise expressly authorized by the zone regulation governing the parcel of property. The provisions of this section shall not apply to conditional use permits.

65906.5 Notwithstanding Section 65906, a variance may be granted from the parking requirements of a zoning ordinance in order that some or all of the required parking spaces be located offsite, including locations in other local jurisdictions, or that in-lieu fees or facilities be provided instead of the required parking space, if both the following conditions are met:

- (a) The variance will be an incentive to, and a benefit for, the nonresidential development.
- (b) The variance will facilitate access to the nonresidential development by patrons of public transit facilities, particularly guideway facilities.

Source: California Government Code, 2011

STUDY SESSION ON VARIANCE FINDINGS

Introduction

A variance is essentially a constitutional safety valve. Variances allow cities to make administrative adjustments where strict application of general regulations would be confiscatory (i.e., a taking) or produce unique hardship. We cannot grant a variance to authorize a use that is not otherwise allowed by our Zoning Ordinance (Chapter 16 of the Town's Municipal Code). We can use them to adjust regulations on physical standards, such as lot size, set backs and so forth, provided that (a) the deciding body makes the necessary findings *and* (b) those findings are supported by the administrative record. This paper explains in greater detail the Town's requirements for variances, established by state law and our Zoning Ordinance. Unless otherwise indicated, citations are to the Town's Municipal Code.

VARIANCES

16-52.030(E) Findings by acting body.

The relevant section of the Municipal Code and a brief discussion of each finding are as follows:

E. Findings by Review Authority. In order to approve or conditionally approve an application for a Variance, the Review Authority shall, on the basis of the application and the evidence submitted, make all of the following findings:

1. Because of special circumstances applicable to the property, including size, shape, topography, location, or surroundings, the strict application of this Zoning Ordinance will deprive the applicant of privileges enjoyed by other properties in the vicinity and in the same or substantially the same zone;

Discussion: This finding requires some physical aspect of the property (not the project design) to constitute a special circumstance that would warrant the granting of a variance. These physical characteristics are typically size (small lot), shape (oddly-shaped or narrow or shallow lot), topography (steep or otherwise physically unusual, which can include rock outcroppings, stands of mature trees, or other unusual physical features). Note that the unusual physical aspect of the property must deprive the applicant of privileges enjoyed by other properties in the vicinity in the same or similar zone. If all properties in the vicinity are steep, then steepness would not be unusual; at that point look to see if

properties in the vicinity have been granted the same type of variance being sought.

2. The Variance will not constitute a grant of special privileges, inconsistent with the limitations upon other properties in the vicinity and in the same or substantially the same zone;

Discussion: Refer to the latter part of the discussion above. If the physical aspect is not typical of surrounding properties, this is an easy finding to make. If the physical aspect is typical of surrounding properties, this is where you need to look at other properties in the vicinity to see if they have been granted similar variances. If not, it would be difficult to justify the variance.

3. The strict application of this Zoning Ordinance would result in practical difficulty or unnecessary physical hardship. Self-created hardships may not be considered among the factors that might constitute special circumstances. A self-created hardship results from actions taken by present or prior owners of the property that consciously create the very difficulties or hardships claimed as the basis for an application for a Variance; and

Discussion: The analysis contained in findings (a) and (b) will largely dictate the write-up of this finding. Finding (c) should contain some analysis of the self-created hardship issue. Note that design issues not related to an unusual or special physical aspect of the property are not justification for a variance. We should not grant a variance merely because the design requires one.

Use common sense in drafting this finding. We should not merely accept (and assert in our staff reports) that the applicant will suffer hardship if they are not granted the variance needed for their extra deck space, media room, etc. We cannot make this finding merely because most of the applicant's neighbors have bigger decks and media rooms (that issue is covered by the prior finding). In considering this issue, ask yourself, would it be really unfair for the applicant to do without the requested improvement? If so, why?

4. The granting of the Variance will not be detrimental to the public welfare or injurious to other property in the vicinity.

Discussion: The public welfare finding is usually a fairly simple finding to make unless the variance request is egregious. The injurious to other property finding is one where neighbor sentiment with respect to the variance can be helpful. If no neighbors are opposed, there would be no evidence in the record to support an injury to other property. In both

cases, stick with facts and figures (acceptable distances between neighbor-owned buildings, safe distance from a public street, no fire, building, or other safety codes violated, etc.).

The Tiburon Zoning Ordinance also adds that:

The applicant shall have the burden of demonstrating the existence of any special circumstances. The Review Authority must find that facts and evidence exist in support of the findings.

Discussion: While this may be true, most applicants are not capable of articulating variance findings and connecting facts in the record to create sufficient justification for granting a variance. Staff will usually (but not always) need to augment any written application materials attempting to justify a variance. Do so only if you independently judge that the findings can be made.

* * * * *

Writing findings

Findings should link raw evidence (facts) in the record to the finding, and do so in a manner that reveals the analytical process and provides rational support for the finding. Evidence should be objectively verifiable, but may be pulled from all sources that were available to the decision maker. In addition to staff reports and public testimony at the hearing, the findings may rely on the personal observations of the individual decision makers (during a site visit, for example), provided that those observations are disclosed during the public meeting. Conclusory statements and circular findings are not sufficient evidence in support of a variance.

Advice: Use terms such as “in that” and “because” liberally, tied to facts and evidence in the record that support the finding.

Revised 5/10/2011

EXCERPT ON VARIANCES FROM TIBURON ZONING ORDINANCE

- D. Public hearing and notice required.** A public hearing as prescribed in Section 16-64 (Public Hearings) shall be held to consider every application for a Variance. Notice shall be given in compliance with Government Code Section 65091 and as otherwise required in Section 16-64.030 (Notice of Hearing).
- E. Findings by Review Authority.** In order to approve or conditionally approve an application for a Variance, the Review Authority shall, on the basis of the application and the evidence submitted, make all of the following findings:
1. Because of special circumstances applicable to the property, including size, shape, topography, location, or surroundings, the strict application of this Zoning Ordinance will deprive the applicant of privileges enjoyed by other properties in the vicinity and in the same or substantially the same zone;
 2. The Variance will not constitute a grant of special privileges, inconsistent with the limitations upon other properties in the vicinity and in the same or substantially the same zone;
 3. The strict application of this Zoning Ordinance would result in practical difficulty or unnecessary physical hardship. Self-created hardships may not be considered among the factors that might constitute special circumstances. A self-created hardship results from actions taken by present or prior owners of the property that consciously create the very difficulties or hardships claimed as the basis for an application for a Variance; and
 4. The granting of the Variance will not be detrimental to the public welfare or injurious to other property in the vicinity.

The applicant shall have the burden of demonstrating the existence of any special circumstances. The Review Authority must find that facts and evidence exist in support of the findings.

F. Findings for Variances from off-street parking or off-street loading regulations.

1. In addition to making the findings required by Subsection E. above, where the application is for a Variance from regulations for off-street parking or off-street loading, the Review Authority shall also make the following findings:
 - a. Neither present nor anticipated future traffic volumes generated by the use of the site or the uses of the sites in the vicinity reasonably require strict or literal interpretation and enforcement of the specified regulation;
 - b. Granting of the Variance will not result in the parking or loading of vehicles on public streets in such a manner as to interfere with the free flow of traffic on the streets, or other private property, or on open space; and
 - c. Granting of the Variance will not create a safety hazard or any other condition inconsistent with the objectives of this Zoning Ordinance.

2. In compliance with Government Code Section 65006.5, a variance may be granted from parking requirements in order that some or all of the required parking spaces be located offsite or that in-lieu fees be provided instead of the required parking spaces, if both the following conditions are met:
 - a. The variance will be an incentive to, and a benefit for, the nonresidential development.
 - b. The variance will facilitate access to the nonresidential development by patrons of public transit facilities.

SAMPLE 1: POORLY-WRITTEN FINDINGS

PROPOSAL:

The applicant has submitted drawings for the expansion and addition to the existing single-family dwelling, with variances for reduced front yard setback and excess lot coverage, for the property located at 2 Gingerbread Lane.

The existing dwelling is single-story and contains three bedrooms, a living room, dining room, kitchen, and two-car garage. The proposed project would include expanding the living areas of the home at the rear of the dwelling, and conversion of the existing garage into an additional bedroom, bathroom and laundry room. A new two-car garage is proposed in front of the existing garage.

In addition to the expansion of the home and conversion of the garage, a partial second story is proposed at the center of the home, which would include a master bedroom and bathroom, terrace and an extra bedroom. The interior of the home would be slightly reconfigured with the proposed improvements. Expanded decking at the rear of the home and an additional terrace off the family room are also proposed.

The proposed structure would create a gross floor area of 3,428 square feet which is below the 3,471 square foot maximum permitted floor area for a parcel of this size. The proposed structure would create a lot coverage of 3,332 square feet (22.6%) which exceeds the 15.0% maximum permitted lot coverage in the RO-2 zoning district. The applicant is requesting a variance for excess lot coverage.

The proposed expansion of the home would result in an approximately 21 foot front yard setback. The maximum front yard setback in the RO-2 zoning district is 30 feet. The applicant is requesting a variance for reduced front yard setback.

Zoning

With the exception of the requested variances for reduced front yard setback and excess lot coverage, the project appears to be in conformance with the remaining development regulations of the RO-2 zoning district.

Variances

In order to grant the requested variances, the Board must make all of the following findings required by Section 16-52.030 (E) 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 Zoning Ordinance will deprive the applicant of privileges enjoyed by other properties in the vicinity and in the same or substantially the same zone.**

Front Yard Setback:

The proposed expansion of the home would push the entry area into the 30 foot front yard setback, resulting in a 21 foot front yard setback at this location. The home is situated towards the end of a cul-de-sac and has a circular front yard, which results in a curvilinear front yard setback line. This is a special circumstance applicable to the property.

Lot Coverage:

The home is situated on a lot that is below the minimum lot size for the RO-2 zoning district. Combined with the topography of the lot, this creates a difficult site in which to work with. It is not unusual to see lot coverage requests on substandard parcels.

- 2. The variance will not constitute a grant of special privileges, inconsistent with the limitations upon other properties in the vicinity and in the same or substantially the same zone.**

Front Yard Setback:

Other homes located within cul-de-sacs commonly have front yard setback issues because the setback line is curvilinear.

Lot Coverage:

Properties in the vicinity of the subject property, specifically on Gingerbread Lane and along Cupcake Street, have previously been granted variances for excess lot coverage. Therefore, this type of variance request is not uncommon.

- 3. The strict application of this Zoning Ordinance would result in practical difficulty or unnecessary physical hardship. Self-created hardships may not be considered among the factors that might constitute special circumstances. A self-created hardship results from actions taken by present or prior owners of the property that consciously create the very difficulties or hardships claimed as the basis for an application for a Variance.**

Front Yard Setback:

The existing home is already located within the front yard setback, so it would be an unnecessary hardship to not allow a small section of the entry porch to encroach additionally into the setback.

Lot Coverage:

Due to the existing topography and orientation of the home and surrounding homes, adding floor area as a full second story to the house to gain additional living space would impede on possible viewsheds from 7 Gingerbread Lane, and would also increase the mass and bulk of the structure. The applicant has opted to convert the existing garage into usable space at the lower level at the front of the property where it is concealed.

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

Front Yard Setback:

Granting the front yard setback would not be detrimental or injurious to other properties because most of the homes along Gingerbread Lane appear to be located within the front yard setback.

Lot Coverage:

The proposal indicates a partial second story. If the home was proposed with a full second story and the existing garage was left unconverted, this may result in additional view blockages for the neighboring residence.

From the evidence provided, Staff believes that there is sufficient evidence to support the findings for the requested variance for excess lot coverage.

SAMPLE 2: WELL-WRITTEN FINDINGS

PROPOSAL

The applicant is submitting a request for construction of a new single-family dwelling and appurtenant outdoor improvements with variances requested for reduced front yard setback and excess wall height. The property is currently improved with a single-family dwelling that would be demolished as part of the project. The footprint of the existing single-story residence is shown on the site plan. The new residence is in the same general location on the lot, but is taller and larger.

The project proposes a two-story structure with an additional basement level. The basement would include an office, a media/exercise room and storage/mechanical rooms. The main level of the home would include a three car garage, living and dining rooms, kitchen, nook, family room, laundry room, and office and a guest suite. A patio would extend the length of the home at the rear, with access from both the family room and living room. A terrace would extend off the living room to connect with the proposed pool house. Substantial grading will be required to construct the project.

The pool house would include a bathroom, laundry room and covered loggia. The upper level of the home would include the master bedroom suite, three bedrooms and corresponding bathrooms, a laundry room and a tech area. An interior elevator and stairway would service all three floors of the home.

The proposed dwelling would result in a gross floor area of 6,194 square feet, which is slightly below the 6,334 square foot maximum floor area ratio permitted for a property of this size. The proposed dwelling would result in a lot coverage of 4,884 square feet (11.2%), which is below the 15.0% maximum permitted lot coverage for the RO-1 zone.

The required front yard setback in the RO-1 zone is thirty (30) feet. The subject property has frontage on Rocky Road, which is a privately-maintained roadway open to public use. It consists of two twenty (20) foot-wide roadway easements over the parcels on either side, with the property lines for those parcels forming the center line of the 40 foot-wide easement. In this instance, the paved surface of Rocky Road is located entirely outside the subject parcel and on the opposing parcel. This unusual physical situation creates a de facto fifty (50) foot front setback, as the Town measures its front yard setbacks from the interior roadway easement line and not the property line. The proposed project shows a small portion of the home encroaching within this larger-than-normal front setback area, although the house would be approximately 37 feet from the paved Rocky Road roadway. The proposed project also shows a thirteen foot, six inch (13'6") high auto court wall located in the front yard setback, coming to within fifteen (15) feet of the Rocky Road roadway. This auto court wall would require a front yard setback variance and a height variance, as any wall over six (6) feet is not permitted in a yard setback area without a variance.

Variations

In order to grant the requested variance for reduced front yard setback for the residence and auto court wall, the Board must make all of the following findings required by Section 16-52.030 (E) 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 Zoning Ordinance will deprive the applicant of privileges enjoyed by other properties in the vicinity and in the same or substantially the same zone;**

As described above, the unusual physical situation (a de facto 50 foot front yard setback from the front property line located at the improved Rocky Road street frontage) constitutes a special circumstance not generally applicable to other properties in the vicinity or zone and which serves to create a hardship for this property. The standard setback is only 30 feet. Since the proposed residence would be placed approximately 37 feet from the Rocky Road roadway, and the roadway is unlikely to be significantly widened in the future as only one vacant single-family lot remains that could be accessed by it, Staff believes there is ample justification for the approximately thirteen (13) foot encroachment by the residence into the front yard setback. The proposed auto court wall is necessary to provide additional off-street parking for the property owner's automobile collection.

2. **The Variance will not constitute a grant of special privileges, inconsistent with the limitations upon other properties in the vicinity and in the same or substantially the same zone;**

Few, if any, other properties in the vicinity or zone have this unusual physical situation where a de-facto fifty (50) foot front setback is required. The grant of variance for the residence, which would still preserve a thirty-seven (37) foot setback from the street frontage, would therefore not constitute a grant of special privilege. Many variances have been granted for excess wall heights.

3. **The strict application of this Zoning Ordinance would result in practical difficulty or unnecessary physical hardship. Self-created hardships may not be considered among the factors that might constitute special circumstances. A self-created hardship results from action taken by present or prior owners of the property that consciously created the very difficulties or hardships claimed as the basis for an application for a Variance; and**

The strict application of the Ordinance would result in a practical hardship for this property in that a de facto fifty (50) foot front yard setback would be required instead of the typical thirty (30) foot setback that is standard in this zone. Allowing the residence to encroach to within thirty-seven (37) feet of the front property line appears to be a reasonable accommodation of this hardship. The

strict application of the maximum wall height requirement would require the property owner to find off-site parking for his automobile collection.

4. The granting of the Variance will not be detrimental to the public welfare of injurious to other property in the vicinity;

The proposed location of the residence would result in a thirty-seven (37) foot setback from the Rocky Road roadway. By the standards of the zone and the typical development pattern in the RO-1 zone, this distance is more the adequate and would not therefore be detrimental to the public or to other properties in the vicinity. The size of the proposed auto court wall would be most noticeable from on the subject property and therefore would not be injurious to other property in the vicinity.

In conclusion, Staff believes there is sufficient evidence to support the findings for the requested variances.