



**TOWN OF TIBURON**  
1505 Tiburon Boulevard  
Tiburon, CA 94920

Planning Commission Meeting  
April 23, 2008  
Agenda Item: 1

## **STAFF REPORT**

**To: Members of the Planning Commission**

**From: Community Development Department**

**Subject: 426 Greenwood Beach Road; File #10803; Conditional Use Permit to Construct a Dock and Float an Unauthorized Existing Pier and Seawalls; Nicky Hall, Owner/Applicant; Assessor's Parcel No. 055-121-33**

## **PROJECT DATA**

Address: 426 Greenwood Beach Road  
Assessor's Parcel Number: 055-121-33  
File Number: 10803  
Lot Size: 42,200 square feet  
Zoning: R-1/M (Single-Family Residential/Marine)  
General Plan: Medium High Density Residential/Marine  
Current Use: Single-Family Dwelling  
Owner: Nicky Hall  
Applicant: Same

## **PROJECT DESCRIPTION**

An application to construct a dock and float and legalize an existing pier and seawalls has been submitted for property located at 2306 Mar East Street. The parcel is currently developed with a single-family residence, with a fixed pier extending past the mean high tide line into Richardson Bay.

The existing pier and seawalls on the site were constructed without first obtaining permits from the Town or other regulatory agencies. The pier extends from several seawalls located on the lower portion of the property and attaches to a concrete abutment. The applicant proposes to secure restorative approval for the pier and seawalls and receive approval for the construction of a new 30 foot long, 20 inch wide gangway leading to a proposed new floating dock that would be 5 feet long and 16 feet wide. The dock and float are intended to provide kayak or small boat access to the bay. No boat lift is proposed that would allow larger boats to be moored at this location.

## ANALYSIS

### Design Issues

The house on the subject property is situated on the higher portion of the site, closer to Greenwood Beach Road. The existing pier is situated along a rocky beach well below the elevation of the house. A series of seawalls supports several terraces near the pier.

The proposed gangway would extend down at an angle to connect with the floating dock, with both the gangway and dock rising and falling with the tide levels. Two wood pilings would be installed on the sides of the dock. As the homes in the immediate vicinity are situated at elevations well above the shoreline, the proposed improvements near the water level would not interfere with any views from nearby residences. The rocky terrain near the pier would make it difficult to see the gangway and dock from most locations on adjacent properties.

Several other properties along Greenwood Beach Road have private piers and docks, including the adjacent property to the west at 424 Greenwood Beach Road. Due to the location of a rocky outcrop between the two properties, it does not appear that the proposed dock would be visible from the dock on the neighboring property.

### General Plan Consistency and Zoning Compliance

A portion of the subject parcel extends out into Richardson Bay. The area beyond the mean high water line is zoned M (Marine), while the landward area is zoned R-1. Section 16-2.9.2 of the Tiburon Zoning Ordinance states that piers and docks for pleasure craft are permitted only with a conditional use permit. The proposed gangway and floating dock therefore require such a permit.

The construction of a new gangway and floating dock and retroactive approval for the existing pier also require approval from the Bay Conservation and Development Commission (BCDC). The applicant has submitted an application to BCDC for approval of the pier and dock. BCDC will not act upon its application until the Town has completed its processing of a conditional use permit application.

Policy LU-26 of the Land Use Element of the Tiburon General Plan states that:

“the Town recognizes and wishes to preserve its bay and waterfront as significant resources and shall closely consider the sensitivity of its coastal environment through the application review process, and shall encourage maximum feasible public access to the waterfront, as called for in the San Francisco Bay Conservation and Development Commission’s (BCDC) *San Francisco Bay Plan*, and where not in conflict with other public uses or with private uses which are of public benefit.”

The presence of several other private piers along this stretch of Greenwood Beach Road indicates long-standing use of this area for recreational boating by residents. The existing pier and proposed floating dock would not interfere with private views across the bay, and therefore would not harm the visual character of other properties in the vicinity.

## Richardson Bay Dock and Boat Study

In October, 2000, The Marin County Board of Supervisors adopted the Richardson Bay Dock and Boat Study (excerpts included as Exhibit 3). This study was commissioned by the County to evaluate the cumulative effects of dock development and boat traffic on wildlife and the Richardson Bay Wildlife Sanctuary. The study made recommendations on future water-related uses for properties that border Richardson Bay. These recommendations were intended to be advisory to the Town of Tiburon for portions of the study area outside the unincorporated portions of the county. The Town responded to this study with a letter dated August 14, 2000 (Exhibit 4) agreeing to utilize the study as an environmental resource document for any future boat facilities proposed for the “North Shore” area, which includes the subject site and other properties along Greenwood Beach Road, and a copy of this letter was placed in the Town files for all Greenwood Beach Road properties.

The study includes the following recommendation for the “North Shore” area:

“New docks should not be approved for the northern shore (just to the west of Audubon’s Tiburon Nature Center) where a potential for 12 additional docks has been identified. This is an extremely shallow area and dock development here would likely have to be accompanied by channel dredging through mudflats and waters of the Sanctuary. (The extensive effort and associated costs to do this are likely reasons why docks have not been built here in the past). Prohibition here is justifiable on environmental grounds.”

The proposed floating dock would not require any channel dredging, as kayaks and other small craft would be able to leave and return to the dock at all times other than during extreme low tides. The applicant has not proposed to install any boat lift to accommodate larger boats which require a dredged channel to reach Richardson Bay from this location. The applicant also understands and will abide by the limitations on boating in Richardson Bay, which prohibit boating in the Sanctuary from October 1 through March 31 each year. Staff is of the opinion that these limitations would eliminate most, if not all, of the environmental grounds upon which the study’s recommendation to prohibit new docks in this area was based, and should be included as conditions of approval on the use permit.

## **ENVIRONMENTAL STATUS**

Staff has made a preliminary determination that the subject application is categorically exempt from the requirements of CEQA per Section 15303 (e) of the CEQA Guidelines that allows new construction of accessory structures. Staff would note that this is a “qualified” exemption, as Section 15300.2 of CEQA states that such exemptions do not apply “where the project may impact on an environmental resource of hazardous or critical concern where designated, precisely mapped, and officially adopted pursuant to law by federal, state, or local agencies.” If it is the opinion of the Planning Commission that protection of the Richardson Bay Wildlife Sanctuary from any potential impacts associated with the proposed project is an applicable qualification under this section, additional CEQA review would be necessary for this project.

## **PUBLIC COMMENT**

No comments have been received regarding the subject application.

## **RECOMMENDATION**

Staff recommends that the Planning Commission take public testimony on this item, close the public hearing and deliberate upon the project merits, and then adopt the draft resolution conditionally approving the project.

## **EXHIBITS**

1. Application form
2. Draft Resolution
3. Excerpts of the Richardson Bay Dock and Boat Study
4. Letter from the Town of Tiburon, dated August 14, 2000 on Dock and Boat Study
5. CEQA Sections 15303 and 15300.2
6. Submitted plans

Prepared by: **Daniel M. Watrous, Planning Manager**

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**TOWN OF TIBURON**  
1505 Tiburon Boulevard  
Tiburon, CA 94920

Planning Commission Meeting  
April 23, 2008  
Agenda Item: 2

## STAFF REPORT

**To: Members of the Planning Commission**

**From: Community Development Department**

**Subject: Conditional Use Permit #19908; Review Of Conditional Use Permit Granted To Expand The Facilities For An Existing Church (St. Hilary Catholic Church) And School; 761 Hilary Drive; Assessor Parcel Nos. 055-253-20 & 055-221-06**

## SUMMARY

On December 6, 2000, the Town Council adopted Resolution No. 3463 granting an appeal of the denial of a conditional use permit (File #19908) for the expansion of an existing church (St. Hilary Catholic Church) and school on property located at 761 Hilary Drive. The use permit approved the following improvements on the site:

- A new 30-foot tall, 8,300 square foot gymnasium for use by the school and to operate the Tiburon Peninsula Catholic Youth Organization (CYO) athletic program, including basketball and volleyball practices and games, sponsored by St. Hilary;
- A single-story, 4,700 square foot parish hall;
- A single-story, 9,000 square foot classroom;
- A single-story, 2,325 square foot convent with a 575 square foot garage; and
- An expansion to the existing rectory.

Condition of approval No. 2 of Resolution No. 3463 provides for review of the permit and reads as follows:

“The subject permit shall be reviewed by the Planning Commission at a public hearing six (6) months after completion of the gymnasium. Additional reviews shall occur once every six (6) months for the next year thereafter, and annually after the first 18 months. During these reviews, or as part of subsequent conditional use permit applications, the Planning Commission shall have the authority to modify the restrictions of this permit to further restrict the uses on the site, including, but not limited to, the potential to prohibit CYO use of the gymnasium on weekends and/or weekday evenings; or have the ability to relax the restrictions contained within this

resolution if the Commission determines that such modifications would be consistent with the spirit and intent of this resolution and would not result in additional impacts on the surrounding neighborhood. The Town reserves the right to amend or revoke this Conditional Use Permit for cause, in accordance with adopted regulations of the Town.”

The first review of the use permit was conducted on March 9, 2005; the second review was conducted on September 28, 2005; the third review was conducted on April 26, 2006; the fourth review was conducted on May 9, 2007. The fifth review has now been scheduled in accordance with this condition of approval.

## **PERMIT HISTORY**

The conditional use permit application was filed on October 25, 1999. The Planning Commission held public hearings on May 10, 2000, June 28, 2000, and August 9, 2000. After hearing extensive testimony from supporters of and opponents to the project, the Commission felt that the proposed gymnasium would have resulted in unacceptable noise, light pollution and traffic impacts on the surrounding residential neighborhood. As a result, on September 13, 2000, the Commission adopted Resolution No. 2000-13 denying the application. The church appealed this decision to the Town Council.

The Town Council held public hearings on the appeal on November 9 & 14, 2000. A Council subcommittee also met with St. Hilary representatives and several neighboring property owners; these meetings centered both on issues and concerns associated with the project, but also with ongoing concerns regarding the interaction of the church and its members with the surrounding neighborhood. The subcommittee formulated a series of recommended conditions of approval intended to mitigate the potential impacts of the project on the residential properties in the vicinity of the church. On December 6, 2000, the Town Council adopted Resolution No. 3463 (Exhibit 1) granting the appeal and approving the use permit, incorporating a lengthy set of conditions of approval, including the requirement for subsequent review of the permit by the Planning Commission.

## **PREVIOUS PERMIT REVIEWS**

As noted above, the first review of the St. Hilary use permit was conducted at the March 9, 2005 Planning Commission meeting. The Staff report for that meeting (attached as Exhibit 2) included a review of all conditions of approval contained in Resolution No. 3463, including many which were completed during the construction of the project.

At the March 9 meeting, the Planning Commission heard testimony from several neighboring property owners expressing concerns about the following issues related to the ongoing activities at St. Hilary:

- The efficacy of the approved three foot (3') tall sound wall at the edge of the parking lot in preventing noise for downhill residents.
- Light pollution on downhill residents caused by several parking lot light fixtures.
- Continuing use of Hilary Drive for some St. Hilary traffic.

Although the Planning Commission shared some of these concerns, it was the consensus of the Commission that St. Hilary was operating in compliance with the conditions of its conditional use permit. However, the Planning Commission encouraged representatives of St. Hilary to meet with the neighboring residents to work on resolving these issues.

The second review of the use permit was conducted on September 28, 2005. The Planning Commission heard testimony from one neighbor about concerns with the adequacy of on-site parking. Another neighbor who had previously raised concerns about exterior lighting testified that this issue has now been resolved. The Commission commended the church for working with its neighbors and again determined that St. Hilary was operating in compliance with the conditions of its conditional use permit.

On October 26, 2005, the Planning Commission held a public hearing on a separate request (Conditional Use Permit #10504) after St. Hilary was approached by the Town Council, who requested that the use permit be modified to amend several conditions of approval of Resolution No. 3463. The request was to increase the hours during which CYO basketball games would be played; eliminate a requirement for a 45 minute period between CYO games; and eliminate the requirement for a traffic monitor to be posted at the Hilary Drive entrance to the site on school days. No objections were received from neighboring property owners, and the Planning Commission adopted Resolution No. 2005-16 recommending approval of these changes to the Town Council. On November 16, 2005, the Town Council adopted Resolution No. 60-2005 (Exhibit No. 11) making these modifications to Resolution No. 3463.

The third and fourth reviews of the use permit were conducted on April 26, 2006 and May 9, 2007. No neighbors appeared at either meeting regarding these reviews. On both occasions, the Commission commended the efforts of the church and its neighbors for working together to resolve their previous issues and again determined that St. Hilary was operating in compliance with the conditions of its conditional use permit.

## **ANALYSIS**

As noted above, many of the conditions of approval contained within Town Council Resolution No. 3463 pertained to requirements to be completed during the construction of the project. The compliance with these conditions of approval was addressed within the Staff report for the previous use permit review. Following are the remaining conditions of approval regarding the ongoing activities of St. Hilary and the status of compliance for each:

### **General Conditions**

- 2. The subject permit shall be reviewed by the Planning Commission at a public hearing six (6) months after completion of the gymnasium. Additional reviews shall occur once every six (6) months for the next year thereafter, and annually after the first 18 months. During these reviews, or as part of subsequent conditional use permit applications, the Planning Commission shall have the authority to modify the restrictions of this permit to further restrict the uses on the site, including, but not limited to, the potential to prohibit CYO use of the gymnasium on weekends and/or weekday evenings; or have the ability to relax the*

*restrictions contained within this resolution if the Commission determines that such modifications would be consistent with the spirit and intent of this resolution and would not result in additional impacts on the surrounding neighborhood. The Town reserves the right to amend or revoke this Conditional Use Permit for cause, in accordance with adopted regulations of the Town.*

*Status:* The gymnasium was completed in August of 2004. This hearing constitutes the fifth review under this condition of approval. The next review would occur in April, 2009, and then annually thereafter.

### **Church and School Conditions**

9. *The maximum school enrollment shall be limited to 335 students. All school programs shall be limited to grades K-8, with no program for pre-school aged children.*

*Status:* The current school enrollment is 270 students. There is no program for pre-school aged children.

10. *After completion of the new classroom addition and associated circulation improvements, traffic for children in Grades 6-8, except for school buses, shall not use the Hilary Drive entrance in the morning, but during that time shall ingress and egress off Rock Hill Drive directly.*

*Status:* School traffic is being directed to the Rock Hill Drive entrance in accordance with this requirement.

11. *A school representative shall be posted for the primary purpose of controlling vehicular speed at the corner of Rock Hill Drive and Hilary Drive on all school days from 7:30 a.m. to 8:10 a.m.*

*Status:* The school has instituted a program using parent volunteers to perform this duty; correspondence previously given to parents is attached as Exhibit 9

12. *Church clerestory lights shall be turned off when the church is not in use.*

*Status:* Staff has not received any complaints about the clerestory lights being left on during the night.

### **Gymnasium Requirements**

20. *All traffic using the gymnasium shall only ingress and egress using the entrances on Rock Hill Drive.*

*Status:* The church has given handouts to CYO coaches directing traffic to only use the Rock Hill Drive entrance (attached as Exhibit 10). Since the last review of the use permit, the Town has not received any additional complaints about traffic using the Hilary Drive entrance. As previously noted, these complaints have diminished over time, as is

expected once more people are aware of the revised circulation patterns for the church property.

### **CYO Limitations**

21. *The CYO use of the gymnasium shall be limited to September through March of each year. Hours of CYO use shall be limited to 8:00 a.m. to 7:30 p.m. on Mondays, Wednesdays and Fridays; 8:00 a.m. to 7:30 p.m. on Tuesdays and Thursdays; and 9:00 a.m. to 5:00 p.m. on Saturdays. CYO uses and all other athletic uses shall be prohibited on all Sundays.*

*Status:* The scheduled CYO games and practices have been in compliance with this requirement, which was modified by Town Council Resolution No. 60-2005.

22. *[Deleted].*

23. *No CYO tournaments shall be played within the gymnasium. At least one St. Hilary team must play in each game in the gymnasium.*

*Status:* No CYO tournaments have been held in the gymnasium. Church representatives have indicated that at least one St. Hilary team has played in each game held in the gym.

24. *The CYO program shall be open to all children on the Tiburon Peninsula, based on the normal age ranges for CYO participants. Children that are not students of St. Hilary shall have equal priority to St. Hilary students and church members to participate in the CYO program*

*Status:* Church representatives have indicated compliance with this requirement.

25. *At least one supervising adult from St. Hilary shall be on duty at all times during all CYO games and practices to ensure compliance with the operating hours and to discourage activities that result in unwanted noise and/or traffic impacts on homes in the vicinity.*

*Status:* Church representatives have confirmed that at least one supervising adult has been present during all CYO games and practices.

### *Design Review Board Recommendations*

26. *Site Plan and Architectural Review approvals shall be obtained for all new buildings and improvements approved under this permit. During the review of these applications, the Design Review Board shall be encouraged to consider the following recommendations in its review of the future facilities on the subject property:*

- (g) *Mitigate glare and light pollution from parking lot lighting by requiring use of light standards that direct light downward and baffles or other necessary devices.*

*Status:* As discussed in the previous review of this use permit, the Planning Commission commended St. Hilary for its work with these neighbors to resolve this issue. Since the last use permit review, the Town has received no further complaints about the lighting.

- (i) *Require that all exterior lighting use downlight fixtures and, if necessary, baffles so that light cannot be seen directly by neighbors.*

*Status:* See Item (g) above. Other new exterior lighting fixtures installed as part of this project are appropriate downlights.

- (j) *Require a fence or other form of sound barrier at the top lip of the slope facing the downhill property owners along Hilary Drive. The barrier should be landscaped.*

*Status:* As discussed during the March 9, 2005 review of this use permit, a three foot (3') tall wooden sound barrier fence has been installed at the top lip of the slope facing the downhill property owners along Hilary Drive, in accordance with the approved Site Plan and Architectural Review plans. Several neighbors questioned the efficacy of the sound wall in preventing noise for downhill residents. The Planning Commission also questioned whether such a sound wall was sufficient, but did not require installation of any additional sound barriers during the previous review of the use permit. No additional complaints regarding noise have been received since the last use permit review.

The mitigation measures included in Resolution No. 3463 as part of the Mitigation Monitoring Program adopted for this use permit have also been completed during the construction of the project.

## **ELIMINATION OF CONSTRUCTION REQUIREMENTS**

As noted above, a number of the conditions of approval of Resolution No. 3463 pertained to requirements to be completed during the construction of the project. There has been some discussion regarding the possibility of deleting the conditions of approval that have already been met from the resolution governing this use permit. Staff recommends that this "clean-up" of the resolution is not necessary at this time, but should be evaluated at such time as St. Hilary may file an application for construction of the other (Phase II) improvements to the site that were originally approved but for which approval has expired, including the convent and rectory.

## **PUBLIC COMMENT**

Since the May 9, 2007 review of this use permit, Staff has not received any additional public comments regarding the activities at St. Hilary.

## **CONCLUSION**

St. Hilary Church and School appear to again be in substantial compliance with the requirements of their use permit. Efforts have been made to meet with the neighbors to address concerns raised at the previous review, and the Town has received no complaints regarding the ongoing activities on the site since the previous review of this permit. Based on the information received to date, Staff does not recommend any modifications to the adopted conditions of approval for the use permit at this time.

## **RECOMMENDATION**

Staff recommends that the Planning Commission take public testimony on this item, close the public hearing, and determine what, if any, modifications should be made to the adopted conditions of approval for this use permit at this time.

## **EXHIBITS**

1. Town Council Resolution No. 3463
2. Minutes of the March 9, 2005 Planning Commission meeting
3. Minutes of the September 28, 2005 Planning Commission meeting
4. Minutes of the October 26, 2005 Planning Commission meeting
5. Minutes of the November 16, 2005 Town Council meeting
6. Minutes of the April 26, 2006 Planning Commission meeting
7. Minutes of the May 9, 2007 Planning Commission meeting
8. Town Council Resolution No. 60-2005
9. St. Hilary School correspondence with parents on posting volunteers for controlling vehicular speed.
10. Instructions for CYO gymnasium use

Prepared by: **Daniel M. Watrous, Planning Manager**

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