



TOWN OF TIBURON
1505 Tiburon Boulevard
Tiburon, CA 94920

Design Review Board Meeting
May 5, 2016
Agenda Item: **3**

STAFF REPORT

To: Members of the Design Review Board
From: Community Development Department
Subject: 2350 Paradise Drive; File No. DR2016030;
Site Plan and Architectural Review to Legalize As-Built Construction of
a Fence and Construction of a New Fence for an Existing Single-Family
Dwelling

PROJECT DATA

ADDRESS: 2350 PARADISE DRIVE
ASSESSOR'S PARCEL: 059-191-03
FILE NUMBER: DR2016030
OWNER/APPLICANT: PETER AND TRACY DEMPSEY
LOT SIZE: 9,782 SQUARE FEET
ZONING: R-2 (SINGLE FAMILY RESIDENTIAL)
GENERAL PLAN: H (HIGH DENSITY RESIDENTIAL)
FLOOD ZONE: X
DATE COMPLETE: MARCH 15, 2016

PROJECT DESCRIPTION

The applicant is requesting design review approval to legalize as-built construction of a fence and construction of a new fence for an existing single-family dwelling on property located at 2350 Paradise Drive. The property is currently developed with a single-family dwelling.

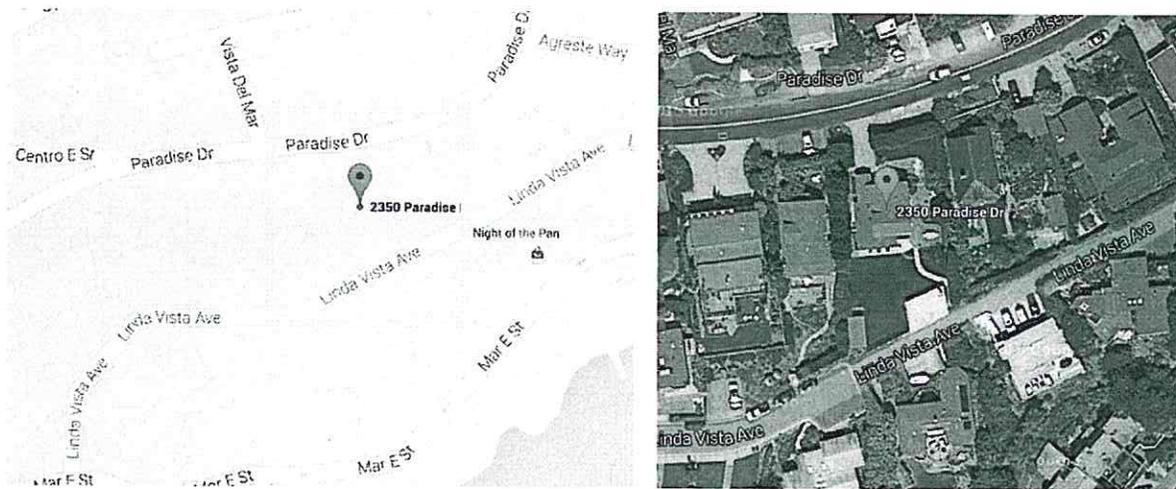
The as-built metal fence is situated on the rear south property line near an existing parking pad on Linda Vista Avenue. The proposed metal fence would be located on the west side property line in between the subject site and 2340 Paradise Drive and in the front north property towards Paradise Drive in front of the existing home. The as-built fence and proposed fence would have a maximum of six feet (6').

This application was first submitted for staff-level design review. During the review of this application, multiple adjacent neighboring property owners raised objections to the design of the as-built fence and proposed fence. As a result, this application has been referred to the Design Review Board.

BACKGROUND

On October 10, 2013, the Planning Division staff approved a Site Plan and Architectural Review application (File# 713099) for construction of a new five (5') foot metal fence along the rear property line and existing parking pad. The fence was instead constructed at a height of six (6') feet. The applicant has requested to legalize the revised fence height as part of the subject application.

PROJECT SETTING



The subject property is located on Paradise Drive with views of the bay, Golden Gate Bridge, San Francisco, Angel Island, and Sausalito. The rear portion of the property is located on the private section of Linda Vista Avenue.

ANALYSIS

Design Issues

The existing improvements on the west property line include mature vegetation and an existing 3-4 tall foot wooden fence, which has been there for many years. The property owner at 2340 Paradise Drive has raised concerns that the proposed 6 foot tall fence would create a “caged- in feeling” on side property for the lower unit. The vegetation and wooden fence would remain. In addition, the neighbor brought up questions about the submitted survey regarding the west side property line. As of date of this report, the neighbor is currently in the process of arranging a second survey, but has not submitted the survey to staff for review.

Multiple adjacent neighbors raised concerns that the proposed 6 foot tall metal fence would be inconsistent with the appearance of other fences in this neighborhood. The fences in the vicinity appear to be a mixture of sizes and materials, including wooden, metal, and glass with heights ranging from 36 inches to 6 feet tall.

The Design Review Board is encouraged to view the existing fence from the residence at 2340 Paradise Drive to determine if the proposed fence would create any visual impacts on the adjacent

home, and view other homes in the vicinity to determine if the proposed and as-built fences would be inconsistent with the visual character of the surrounding neighborhood.

Zoning

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

PUBLIC COMMENT

As of the date of this report, there have been four (4) correspondences in opposition and (1) correspondence in support regarding this application.

PRELIMINARY ENVIRONMENTAL DETERMINATION

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 Sections 150301 and 15303 of the CEQA Guidelines.

RECOMMENDATION

Staff recommends that the Board:

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 Sections 15301 and 15303. If the Board wishes to approve the application, it is recommended that the attached conditions of approved be applied.

EXHIBITS:

1. Conditions of Approval
2. Application and Supplemental Materials
3. Email dated March 23, 2016 from Roger Bartels
4. Email dated March 24, 2016 from Tyler Barlett
5. Email dated March 28, 2016 from Julia Shumelda
6. Email dated March 28, 2016 from Jayne and David Love
7. Email dated April 11, 2016 from Christy Newman
8. Submitted Plans

EXHIBIT 1

**DRAFT CONDITIONS OF APPROVAL
2350 PARADISE DRIVE
FILE NO. DR2106030**

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 to the application and plans dated by the Town of Tiburon on March 14, 2016, as amended by these conditions of approval. Any modifications to the plans of March 14, 2016 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 un-approved project elements is in violation of permit approvals and shall be subject to Stop Work Orders and removal.
4. If this approval is challenged by a third party, the property owner/applicant will be responsible for defending against this challenge, with defense counsel subject to the Town's approval. 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. A copy of the Planning Division's "Notice of Action" including the attached "Conditions of Approval" for this project shall be copied onto a plan sheet at the beginning of the plan set(s) submitted for building permits.
6. The applicant must meet all requirements of other agencies prior to the issuance of a building permit for this project.
7. Fencing shall not exceed six feet (6') in height at any point, measured from grade.



TOWN OF TIBURON
LAND DEVELOPMENT APPLICATION

RECEIVED
MAR 14 2016
PLANNING DIVISION

TYPE OF APPLICATION

- Conditional Use Permit
- Precise Development Plan
- Secondary Dwelling Unit
- Zoning Text Amendment
- Rezoning or Prezoning
- General Plan Amendment
- Temporary Use Permit
- Design Review (DRB)
- Design Review (Staff Level)
- Variance(s) _____ #
- Floor Area Exception
- Tidelands Permit
- Sign Permit
- Tree Permit
- Tentative Subdivision Map
- Final Subdivision Map
- Parcel Map
- Lot Line Adjustment
- Condominium Use Permit
- Seasonal Rental Unit Permit
- Other FENCE

APPLICANT REQUIRED INFORMATION

SITE ADDRESS: 2350 Paradise Dr. PROPERTY SIZE: _____
PARCEL NUMBER: 059-191-03 ZONING: R-2

PROPERTY OWNER: Peter + Tracy Dempsey
MAILING ADDRESS: P.O. Box 247 Tiburon, CA 94926

PHONE/FAX NUMBER: 415-435-1909 E-MAIL: Peter.Dempsey@comcast.net

APPLICANT (Other than Property Owner): _____
MAILING ADDRESS: _____

PHONE/FAX NUMBER: _____ E-MAIL: _____

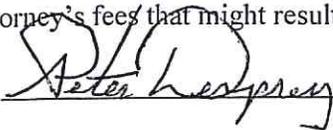
ARCHITECT/DESIGNER/ENGINEER MARIN FENCE COMPANY/DOUG MONTE
MAILING ADDRESS: 63 LARKSPUR STREET
SAN RAFAEL CA 94901
PHONE/FAX NUMBER: 415 457 1771 E-MAIL: _____

Please indicate with an asterisk (*) persons to whom Town correspondence should be sent.

BRIEF DESCRIPTION OF PROPOSED PROJECT (attach separate sheet if needed):
LEGALIZE EXISTING FENCE TO 6' HEIGHT AND THE ADDITION OF A LENGTH
OF FENCE ON THE WESTERN BOUNDARY OF THE PROPERTY

I, the undersigned owner (or authorized agent) of the property herein described, hereby make application for approval of the plans submitted and made a part of this application in accordance with the provisions of the Town Municipal Code, and I hereby certify that the information given is true and correct to the best of my knowledge and belief.

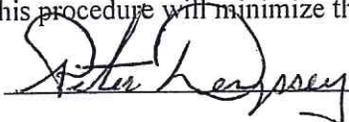
I understand that the requested approval is for my benefit (or that of my principal). Therefore, if the Town grants the approval, with or without conditions, and that action is challenged by a third party, I will be responsible for defending against this challenge, with the defense counsel subject to the Town's approval. I therefore agree to accept this responsibility for defense at the request of the Town and also agree to defend, indemnify and hold the Town harmless from any costs, claims or liabilities arising from the approval, including, without limitation, any award of attorney's fees that might result from the third party challenge.

Signature: * 

Date: 3/10/16

The property involving this permit request may be subject to deed restrictions called Covenants, Conditions and Restrictions (CC&Rs), which may restrict the property's use and development. These deed restrictions are private agreements and are NOT enforced by the Town of Tiburon. Consequently, development standards specified in such restrictions are NOT considered by the Town when granting permits.

You are advised to determine if the property is subject to deed restrictions and, if so, contact the appropriate homeowners association and adjacent neighbors about your project prior to proceeding with construction. Following this procedure will minimize the potential for disagreement among neighbors and possible litigation.

Signature: * 

Date: 3/10/16

**If other than owner, must have an authorization letter from the owner or evidence of de facto control of the property or premises for purposes of filing this application*

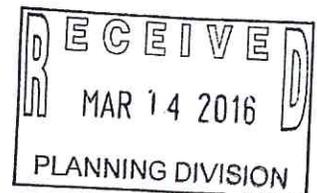
NOTICE TO APPLICANTS

Pursuant to California Government Code Section 65945, applicants may request to receive notice from the Town of Tiburon of any general (non-parcel-specific), proposals to adopt or amend the General Plan, Zoning Ordinance, Specific Plans, or an ordinance affecting building or grading permits.

If you wish to receive such notice, then you may make a written request to the Director of Community Development to be included on a mailing list for such purposes, and must specify which types of proposals you wish to receive notice upon. The written request must also specify the length of time you wish to receive such notices (s), and you must provide to the Town a supply of stamped, self-addressed envelopes to facilitate notification. Applicants shall be responsible for maintaining the supply of such envelopes to the Town for the duration of the time period requested for receiving such notices.

The notice will also provide the status of the proposal and the date of any public hearings thereon which have been set. The Town will determine whether a proposal is reasonably related to your pending application, and send the notice on that basis. Such notice shall be updated at least every six weeks unless there is no change to the contents of the notice that would reasonably affect your application. Requests should be mailed to:

Town of Tiburon
Community Development Department
Planning Division
1505 Tiburon Boulevard
Tiburon, CA 94920
(415) 435-7390 (Tel) (415) 435-2438 (Fax)
www.townoftiburon.org



DO NOT WRITE BELOW THIS LINE

DEPARTMENTAL PROCESSING INFORMATION

Application No. <u>DR2016-030</u>	GP Designation:	Fee Deposit: <u>\$510⁰⁰</u>
Date Received: <u>3/14/16</u>	Received By: <u>LS</u>	Receipt #: <u>R828</u>
Date Deemed Complete: <u>3/15/16</u>	Action:	By: <u>LO</u>
Acting Body:		Date:
Conditions of Approval or Comments: _____		Resolution or Ordinance # _____

MINOR ALTERATION SUPPLEMENT

Please fill in the information requested below:

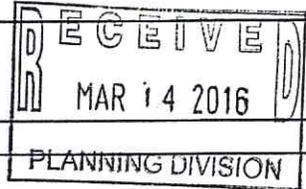
1. Briefly describe the proposed project (attach separate sheet as needed): LEGALIZE EXISTING 6' FENCE AND APPROVE THE ADDITION OF A 6' FENCE ON THE WESTERN SIDE OF THE PROPERTY

2. Lot area in square feet (Section 16-100.020(L))*: _____ Zoning: R-2

3. Square footage of Landscape Area: _____

4. Proposed use of site (example: single family residential, commercial, etc.):
 Existing SINGLE FAMILY
 Proposed SINGLE FAMILY

5. Describe any changes to parking areas including number of parking spaces, turnaround or maneuvering areas.



TO BE COMPLETED BY APPLICANT				STAFF USE ONLY	
ITEM	EXISTING	PROPOSED ADDITION AND/OR ALTERATION	PROPOSED	CALCULATED	PER ZONE
Yards (Setbacks from property line) (Section 16-100.020(Y))* Front	ft.	ft.	ft.	ft.	ft.
Rear	ft.	ft.	ft.	ft.	ft.
Right Side	ft.	ft.	ft.	ft.	ft.
Left Side	ft.	ft.	ft.	ft.	ft.
Maximum Height (Section 16-30.050)*	<u>6</u> ft.	<u>6</u> ft.	ft.	ft.	ft.
Lot Coverage (Section 16-30.120(B))*	sq.ft.	sq.ft.	sq.ft.	sq.ft.	sq.ft.
Lot Coverage as Percent of Lot Area	%	%	%	%	%
Gross Floor Area (Section 16-100.020(F))*	<u>1875</u> sq.ft.	<u>1875</u> sq.ft.	sq.ft.	sq.ft.	sq.ft.

*Section numbers refer to specific provisions or definitions in the Tiburon Municipal Code, Title IV, Chapter 16 (Zoning)

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REC
MAR 14 2016
PLANNING DIVISION



Kyra O'Malley

From: Roger Bartels <roger.bartels@gmail.com>
Sent: Wednesday, March 23, 2016 11:29 AM
To: Kyra O'Malley
Cc: Julia Shumelda; Roger Bartels
Subject: 2350 Paradise Drive, Dempsey, DR2016030

Dear Ms. O'Malley,

In reference to the installation of the 6 ft. high steel picket fence along the Shumelda / Dempsey property line, as neighbor of and architect for Ms. Shumelda, I feel it is an inappropriate design in conflict with the wooden screens and fences that surround the other three sides of her property, including mine at 2334 Paradise Dr.

Respectfully, Roger Bartels

Kyra O'Malley

From: Tyler Bartlett <bartletttyler@yahoo.com>
Sent: Thursday, March 24, 2016 11:37 AM
To: Kyra O'Malley
Subject: 2350 Paradise Dr. fence

Good afternoon Kyra,

My name is Tyler Bartlett, I am the owner of 2360 Paradise dr. I have a few concerns regarding the existing fence and proposed fence at 2350 Paradise Dr. First, I am upset that this fence was built without permits, without approval from the board, and without consulting any of the neighbors. The Dempseys have shown disregard for neighbors in the past and I would like to ensure that my property's value is not diminished any more. Second, it is the only fence of its kind in the neighborhood. There are already uncharacteristic features on their property and the owners have no interest in maintaining the look and feel of the neighborhood. The fences adjacent and close in proximity are predominantly closed panel wood, not open metal rods. This fence provides no privacy in or out. Furthermore, as I recall, the fence originally extended along our shared property line and was taller than our existing fence. This portion of the fence has since been removed. I would like to ensure that the height limitations are not exceeded should a fence be approved.

Thank you, please contact me with questions or concerns.

Tyler Bartlett

Sent from my iPhone

Kyra O'Malley

From: Julia Shumelda <drjulia@att.net>
Sent: Monday, March 28, 2016 7:37 AM
To: Kyra O'Malley
Subject: 2350 Paradise Tiburon, CA

Good Morning, Kyra,

I wanted to bring to your attention that the residents of 2350 Paradise, Tiburon had a survey done along our mutual property line and there are now boundary stakes that extend 1.5 ft. onto our property. The previous owner of 2340 Paradise, Jeff Teather, confirms that the current fence was present when his family purchased this property in 1954. We are in the process of arranging our own survey.

Further, this fence which currently runs along both property lines is 4" tall, which is a much more suitable height for a fence that is approx. 6 ft. from the downstairs dining room and kitchen. Given the easterly facing windows downstairs and the close proximity, anything taller than 4' would completely visible from living room, dining room and kitchen lending an uncomfortable sense of being in a cage, given it's metal stake design. As such I would ask you not to approve a 5' or 6' tall metal fence. Kindly let me know when would be a convenient time for you to view this, Kyra.

I would also request that you not legalize the as-built fencing that was built without permits. In addition to being too tall, a metal stake fence is not in harmony with the existing screening and fencing found in our neighborhood.

Many thanks,

Julia Shumelda
2340 Paradise Drive
Tiburon, CA 94920

Kyra O'Malley

From: Jane Love <janedlove@hotmail.com>
Sent: Monday, March 28, 2016 7:43 AM
To: Kyra O'Malley
Subject: Fwd: Email to Kyra

Sent from my iPhone

Begin forwarded message:

Dear Ms. O'Malley,

Regarding the application to legalize fence at 2350 Paradise, Tiburon, CA. my husband, David, and I urge you not to legalize the as-built fence and not approve to the new 6 foot tall metal fence along the west side property line as it in keeping with the character of the neighborhood. We are further concerned that the as-built fence protrudes into the right of way on Linda Vista.

Regards,

Jayne and David Love

Kyra O'Malley

From: Christy Newman <christynewman@westoneditorial.com>
Sent: Monday, April 11, 2016 12:27 PM
To: Kyra O'Malley
Subject: fence at 2350 Paradise Drive.

Dear Ms. O'Malley,

I am a neighbor of Tracy and Peter Dempsey and would like to respond to recent comments sent to you about their fence at 2350 Paradise Drive.

Jane Love's assertion that it protrudes into the right of way of Linda Vista is absurd; there is a 2-foot strip of land in front of the fence that is level with both adjacent properties.

Although Julia Shumelda hasn't completed her own property survey, currently under renovation, she claims a boundary stake extends 1.5 feet into her property. For the basis of this claim, she apparently relies on the prodigious memory of the previous owner who can still remember where a fence was sited "when his family purchased the property in 1954."

Shumelda also complains that the Dempsey's fence makes her feel caged in while her 4-foot wooden fence "is a much more suitable height." Yet, unlike her wooden fence, through which *nothing* can be seen, the metal is open and airy, and, with the dense shrubbery between the properties, virtually invisible.

On the other side of the Dempsey property, Tyler Bartlett complains about the opposite problem: that the fence provides no privacy, even though his existing wooden fence already assures that no one can see into his property. By the way, the Dempsey's metal fence is the same height as Bartlett's wooden one.

As for the general assertions that a metal fence isn't "in harmony" with the neighborhood, the house that directly faces the Dempsey's at 34 Linda Vista, known as "The Castle" and purported to be one of the oldest houses in Tiburon, has a metal stake fence.

Moreover, our neighborhood is in transition. Witness the Loves' demolition of a classic Tiburon cottage which they replaced with a wood-and-glass ultra modern home, and Shumelda's current conversion of a two-family

into a single unit with an expanded deck. That the Dempseys put up a fence that doesn't interfere with anyone's views or intrude on their property makes these charges seem to be simply a case of harassment.

I encourage you ignore the charges by the Loves, Shumelda, and Bartlett—charges that are truly and utterly without merit.

Sincerely yours,

Christy M. Newman

24 Linda Vista Avenue