



TOWN OF TIBURON
1505 Tiburon Boulevard
Tiburon, CA 94920

Planning Commission Meeting
July 13, 2016
Agenda Item: **PH-1**

STAFF REPORT

To: Members of the Planning Commission

From: Community Development Department

Subject: 2304 Mar East Street; Files #TIDE2015003
Appeal of Tidelands Permit to Expand an Existing Dock and Pier; Mark and Racia Blumenkranz, Owners/Appellants; Assessor's Parcel No. 059-400-10 (Continued from April 27, 2016)

Reviewed By: _____

BACKGROUND

The applicant has submitted an application to expand an existing dock and pier adjacent to a property developed with a single-family dwelling located at 2304 Mar East Street. The project would install a 12 foot by 6 foot kayak platform on the right (west) side of the dock and install glass guard rails on a portion of the existing dock. On January 28, 2016, Planning Division staff conditionally approved the application, with modifications to the submitted plans to limit the maximum height of the boat lift and not approving guard rails around the dock. The applicant subsequently appealed this decision to the Planning Commission.

The appeal was reviewed by the Planning Commission on April 27, 2016. At that meeting, the applicants suggested possible modifications to the approved plans, including a redesigned dock configuration, cable steel railings for the guard rails, limitations on storage on the dock, removal of an existing flagpole and a request to simply keep the kayak platform at a level below the dock when not in use. The applicants also provided information questioning whether the building code required guard rails on docks. Several neighboring property owners raised concerns about potential view blockage and privacy impacts from the proposed improvements.

The consensus of the Planning Commission was that guard rails should be allowed on at least a portion of the dock, the flagpole should be removed and the platform lift should be limited per the original condition of approval. The Commission requested additional information regarding the code requirements for guardrails and asked for an opinion from the Town Attorney. The appeal was continued to allow time to gather this information and to allow time for the applicant to meet with the neighbors to discuss possible compromises.

ANALYSIS:

The Town Attorney reviewed the relevant sections of the building code and the information submitted by the applicant and determined that the applicant is required to install guard rails on the dock under the requirements of the Tiburon Municipal Code.

The applicant has met with both adjoining property owners and has reached an agreement between the three parties regarding the dock and pier design. The agreement includes the following changes to the project design:

1. The kayak lift would be located as close to the residence as possible without further cutting the deck or pier and still keeping the lift parallel to the long axis of the pier.
2. The boat lift would be redesigned so that the level of the platform at its highest point shall be at least one foot (1') below the level of the adjacent pier, similar to the current condition of approval. Related lift equipment would be installed with a maximum height of three feet, six inches (3' 6") above the level of the adjacent pier.
3. The proposed guard rails would utilize a horizontal steel cable rail design around the entire perimeter of the pier.
4. The existing flagpole on the dock shall be removed upon completion of the project construction.

The agreement also includes limitations on storage of "deck furniture, watercraft or other similarly sized large items" on the pier and a limitation on the size of a boat to be stored on the existing boat lift. Staff does not view these as zoning issues and does not recommend approval of any condition of approval for these issues. The Town has historically avoided conditions of approval that are difficult to enforce and have the potential for requiring ongoing staff involvement over potentially minor infractions.

RECOMMENDATION

It is recommended that the Planning Commission:

- 1) Hold a public hearing and take testimony on the appeal; and
- 2) Deliberate on the appeal and adopt the draft resolution (**Exhibit 1**) partially granting the appeal, with additional conditions of approval.

EXHIBITS

1. Draft resolution
2. Planning Commission staff report dated April 27, 2016
3. Minutes of the April 27, 2016 Planning Commission meeting
4. Submitted plans

Prepared By: Daniel M. Watrous, Planning Manager

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RESOLUTION NO. 2016-(Draft)

**A RESOLUTION OF THE PLANNING COMMISSION OF THE TOWN OF TIBURON
PARTIALLY GRANTING AN APPEAL BY MARK AND RACIA BLUMENKRANZ OF THE
APPROVAL OF A TIDELANDS PERMIT TO EXPAND AN EXISTING DOCK AND PIER
FOR PROPERTY LOCATED AT 2304 MAR EAST STREET**

ASSESSOR PARCEL NO. 059-400-10

WHEREAS, on December 10, 2015 the Town of Tiburon received an application for a Tidelands Permit to expand an existing dock and pier adjacent to a property developed with a single-family dwelling (Town File #TIDE2015003) for property located at 2304 Mar East Street, proposed by Mark and Racia Blumenkranz ("Applicants"); and

WHEREAS, during the ten-day notice period, Staff visited the site and viewed the existing dock from the adjacent homes at 2306 and 2280 Mar East Street, where the property owners were concerned about potential view impacts that could be caused by the height of the kayak platform and the proposed glass guard rails; and

WHEREAS, one January 28, 2016, staff conditionally approved the subject application and, in response to the neighbors' concerns, imposed the following conditions of approval on the application:

1. The boat lift shall be redesigned so that the level of the platform at its highest point shall be at least one foot (1') below the level of the adjacent pier. Any related lift equipment shall be installed with a maximum height of two feet, six inches (2' 6") above the level of the adjacent pier.
2. The proposed guard rails are not approved.

WHEREAS, on February 8, 2016, the Applicants filed a timely appeal of the staff's decision; to conditionally approve the application; and

WHEREAS, on April 27, 2016, the Planning Commission held a duly-noticed hearing on the appeal, during which testimony was heard and considered regarding the proposed project and the Planning Division staff's review of the application; and

WHEREAS, after hearing all testimony and reviewing all documents in the record, the Planning Commission continued the appeal and requested information from the Town Attorney regarding the requirements for guard rails on docks contained in the Tiburon Municipal Code; and

WHEREAS, on July 13, 2016 the Planning Commission held the continued hearing on the appeal, during which testimony was heard and considered regarding the proposed project and the Town Attorney's opinion that the Municipal Code requires guard rails on docks; and

WHEREAS, the Planning Commission determined that the guard rails would be necessary for safe use of the dock. The Commission also determined that a horizontal steel cable rail design, along with the limitation on the height of the boat lift and a requirement to remove the existing flagpole on the dock, would minimize view impacts on neighboring residents.

NOW, THEREFORE, BE IT RESOLVED that the Design Review Board of the Town of Tiburon hereby partially grants the appeal of Mark and Racia Blumenkranz.

BE IT FURTHER RESOLVED that the Planning Commission adds the following conditions of approval to those imposed by the Planning Division staff:

1. The kayak lift shall be located as close to the residence as possible without further cutting the deck or pier and still keeping the lift parallel to the long axis of the pier.
2. The boat lift shall be redesigned so that the level of the platform at its highest point shall be at least one foot (1') below the level of the adjacent pier. Any related lift equipment shall be installed with a maximum height of three feet, six inches (3' 6") above the level of the adjacent pier.
3. The proposed guard rails shall utilize a horizontal steel cable rail design around the entire perimeter of the pier. The railing design shall be similar to 1.5" stainless steel stanchions at 6 foot centers (where physically possible), with 1/8" stainless steel cable intermediates and stainless round bar cap rail.
4. The existing flagpole on the dock shall be removed upon completion of the project construction.

BE IT FURTHER RESOLVED that the final and consolidated conditions of approval are attached as Exhibit "A" hereto.

PASSED AND ADOPTED at a regular meeting of the Planning Commission of the Town of Tiburon on July 13, 2016, by the following vote:

AYES: COMMISSIONERS:
NOES: COMMISSIONERS:
ABSTAIN: COMMISSIONERS:
ABSENT: COMMISSIONERS:

ATTEST:

ERICA WILIAMS, CHAIR
TIBURON PLANNING COMMISSION

DANIEL M. WATROUS, SECRETARY

EXHIBIT A

**FINAL CONDITIONS OF APPROVAL
2304 MAR EAST STREET
FILE #TIDE2015003**

(AS AMENDED AT THE JULY 13, 2016 PLANNING COMMISSION MEETING)

5. The kayak lift shall be located as close to the residence as possible without further cutting the deck or pier and still keeping the lift parallel to the long axis of the pier.
6. The boat lift shall be redesigned so that the level of the platform at its highest point shall be at least one foot (1') below the level of the adjacent pier. Any related lift equipment shall be installed with a maximum height of three feet, six inches (3' 6") above the level of the adjacent pier.
7. The proposed guard rails shall utilize a horizontal steel cable rail design around the entire perimeter of the pier. The railing design shall be similar to 1.5" stainless steel stanchions at 6 foot centers (where physically possible), with 1/8" stainless steel cable intermediates and stainless round bar cap rail.
8. The existing flagpole on the dock shall be removed upon completion of the project construction.
9. The applicant shall obtain Site Plan and Architectural Review approval for the final design of the dock, pier and associated improvements.
10. The applicant shall obtain all necessary permits from the Town Building Division for the proposed addition.
11. The applicant shall meet all requirements of the Bay Conservation and Development Commission and all other applicable agencies.
12. 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 Site Plan and Architectural Review and building permits.
13. 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.



TOWN OF TIBURON
1505 Tiburon Boulevard
Tiburon, CA 94920

Planning Commission Meeting
April 27, 2016
Agenda Item: **PH-2**

STAFF REPORT

To: Members of the Planning Commission

From: Community Development Department

Subject: 2304 Mar East Street; Files #TIDE2015003
Appeal of Tidelands Permit to Expand an Existing Dock and Pier; Mark and Racia Blumenkranz, Owners/Appellants; Assessor's Parcel No. 059-400-10

Reviewed By: _____

PROJECT DATA

Address:	2304 Mar East Street
Assessor's Parcel Number:	059-400-10
File Number:	TIDE2015003
Lot Size:	12,277 square feet
General Plan:	Medium High Density Residential
Zoning:	R-2 (Two-Family Residential)/M (Marine)
Current Use:	Single-family residential
Owners/Appellants:	Mark and Racia Blumenkranz
Applicants:	Peter Clark/Clausen Engineers
Flood Zone:	X/VE – Special Flood Hazard Area

SUMMARY

The applicant has submitted an application to expand an existing dock and pier adjacent to a property developed with a single-family dwelling located at 2304 Mar East Street. The project would install a 12 foot by 6 foot kayak platform on the right (west) side of the dock and install glass guard rails on a portion of the existing dock. While the project is located in a special flood hazard zone, the work is too minimal to trigger the substantial improvement provisions of the Town Flood Ordinance.

On January 28, 2016, Planning Division staff conditionally approved the application, but required two modifications to the submitted plans:

1. The boat lift was to be redesigned so that the level of the platform at its highest point shall be at least one foot (1') below the level of the adjacent pier. Any related lift equipment was to be installed with a maximum height of two feet, six inches (2' 6") above the level of the adjacent pier.

2. The proposed guard rails were not approved.

On February 8, 2016, the applicants filed a timely appeal of this decision. The owners of the properties at 2308 & 2322 Mar East Street also filed separate appeals of this decision, but have since withdrawn their appeals. Section 16-50.020 of the Tiburon Zoning Ordinance (Authority for Land Use and Zoning Decision) requires that appeals of minor Tidelands Permits be heard by the Planning Commission, whose decision shall be final.

REVIEW BY PLANNING DIVISION

Staff visited the site and viewed the existing dock from the adjacent homes at 2306 and 2280 Mar East Street. The property owners at 2306 Mar East Street were concerned about potential view impacts that could be caused by the height of the kayak platform and the proposed glass guard rails. The platform, as originally designed, would have lifted to a level above the existing dock, which would have placed kayaks or other craft stored on the platform in the line of sight above the dock when viewed from this neighboring residence. The glass rails had the potential to become cloudy over time and create a further visual barrier in this line of sight. Both neighboring property owners raised concerns about how the guard rails could potentially allow the currently open pier to be used as an extension of the existing exterior deck to the rear of the house and allow more outdoor activity on the pier.

Planning Division staff determined that the kayak platform, as designed, would have resulted in substantial view impacts on homes in the vicinity, but, if lowered, would not result in substantial view impacts and would provide better access for water-related uses from the existing pier. Staff also determined that the guard rails, whether utilizing glass or other materials, would have intruded into views toward the Golden Gate Bridge from the home at 2306 Mar East Street and had the potential to result in additional outdoor activities on the existing pier and increased privacy impacts on the homes at 2306 and 2280 Mar East Street.

As a result, staff conditionally approved the application, with the requirements that the kayak platform be lowered and the guard rails eliminated. The applicant subsequently filed an appeal of this decision.

BASIS FOR THE APPEAL:

There are two grounds upon which the appeal (**Exhibit 1**) is based:

Ground #1: **The guard rails are necessary for safety purposes.**

Staff Response: Planning Division staff confirmed with the Tiburon Building Official that the building code does not require guard rails for safety purposes on piers. Open piers are often constructed without guard rails to provide easier access for boats, kayaks and other watercraft without having to lift or access these craft over the railings. There are many examples along the Tiburon peninsula shoreline of piers that do not have guard rails, along with others with guard rails.

The house on this site includes a deck to the rear, adjacent to the pier, which is surrounded by guard rails as required by the building code for safety purposes. In recent years, this deck has been utilized for outdoor entertaining and storage of boats and other equipment. The neighboring

residents at 2306 and 2280 Mar East Street raised concerns that guard rails would increase the potential for the pier to also be used as an outdoor entertainment space, which would increase outdoor activities in an area in the line of sight from both adjacent homes and in close proximity to the living room of the home at 2280 Mar East Street.

Staff determined that the proposed guard rails had a substantial potential to change the use of the pier from supporting boating and marine activities to an enlarged outdoor activity space. After confirming that this guard rail was not required for safety purposes by any adopted code, staff determined that the guard rails should not be approved, eliminating any potential disruptive change in the use of the pier.

Ground #2: The view impacts of the glass guard rails can be reduced by installing cable rails instead.

Staff Response: After the appeal was filed, the applicant submitted revised plans that would alter the project design. The glass guard rails would be replaced by horizontal cable steel rails, with 1.5 inch steel posts and 1/8 inch steel cables railings spaced 3 inches apart. The revised plans would also place the kayak lift in the middle of the pier, rather than attaching the platform to the side of the pier.

The proposed cable railing would not have the same potential to obscure views as the originally proposed glass guard rails, but would also not provide unfettered viewlines through the guard rails for the home at 2306 Mar East Street. In addition, the cable rails would still create the potential to change the use of the pier into an outdoor activity space.

CONCLUSION

In reaching its decision on this project, Planning Division staff attempted to balance the applicant's stated need for safety against the potential impacts on neighboring properties that could be caused by a change in use of the pier enabled by the proposed guard rails. Staff believes that the pier can still be used for its intended purpose of providing water-oriented recreational opportunities without the requested guard rails.

RECOMMENDATION

It is recommended that the Planning Commission:

- 1) Hold a public hearing and take testimony on the appeal in accordance with the Town's adopted procedure (see attached **Exhibit 2**), and close the public hearing.
- 2) Deliberate on the appeal and, if prepared to do so, indicate its intentions regarding the appeal.
- 3) Direct Staff to return with an appropriate resolution for consideration of adoption at the next meeting.

EXHIBITS

1. Notice of appeal
2. Appeal procedures
3. Application form and supplemental materials
4. Letter from Mark and Shauna Dickinson, dated January 7, 2016
5. Letter from Mik Flynn, dated January 9, 2016
6. Letter from Peter Wilton, dated January 17, 2016
7. Letter from Mik Flynn, dated January 20, 2016
8. Letter from Magdalena Yesil and Jim Wickett, dated January 22, 2016
9. Letter from Charles and Mik Flynn, dated April 20, 2016
10. Submitted plans

Prepared By: Daniel M. Watrous, Planning Manager

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Jennifer Lamers stated that she represented Scott and Jennifer Winters as they could not be present tonight and she introduced family members present. She said that the Winters intend to keep the house as their family home and would like to remove the kitchen they do not use and convert it into a bedroom. She said that there would be no exterior change to the house. She stated that the Winters are quite connected to the community and were simply asking to convert it from a two-family home into a single-family home.

Vice Chair Williams opened the public hearing and there were no public speakers. She closed the public hearing.

Commissioner Welner said that this was a reasonable request. He noted that the only question raised by staff was with regard to loss of an available housing unit, but he was inclined to support the application.

Commissioner Weller said that his only sensitivity regarded the removal of rental units and he thought that staff made an adequate finding for that in this case. He said that he was in favor of supporting large families in Tiburon that add to the community and schools and he supported the proposal.

Commissioner Corcoran stated that the staff report was thorough as it touched on all relevant issues. He said that this would not be a dramatic change and seemed consistent with the character of the neighborhood, noting there are two other single-family dwelling units nearby and that this would not dramatically change the functional use of the property. He supported the application.

Vice Chair Williams agreed with her fellow Commissioners and stated that a single-family dwelling was a perfectly appropriate use for this site. She said that she saw nothing that would violate the General Plan land use policies on neighborhood character and compatibility of use, and as to the housing policy regarding rental housing in the General Plan; she felt that this would be a de minimis loss of housing. She said that the current house configuration was not very functional as a two-family unit and it she thought that the structure should be returned to its original design as a single-family home.

ACTION: It was M/S (Welner/Corcoran) to adopt the attached resolution approving the conditional use permit. Motion carried: 4-0.

2. 2304 MAR EAST STREET: Appeal of Planning Division decision to conditionally approve a Tidelands Permit to expand an existing dock and pier; File #TIDE2015003; Mark and Racia Blumenkranz, Owners/Appellants; Assessor's Parcel No. 059-400-10

Planning Manager Watrous gave the staff report, and said this is an appeal of an entitlements permit to expand an existing dock and pier at 2304 Mar East Street. The applicant submitted an application to expand this existing dock and pier adjacent to their home to install a 12 foot by 6 foot kayak platform on the right side of the dock and install glass guard rails on a portion of the existing dock. On January 28, 2016, Planning staff conditionally approved the application, but required that the boat lift be redesigned so that the level of the platform at its highest point would

be one foot below the level of the adjacent pier and did not approve the proposed guard rails. On February 8th the applicants filed a timely appeal of this decision.

During review of the application, staff visited the property and adjacent homes at 2306 and 2280 Mar East Street. Those neighbors at 2306 Mar East Street were concerned about impacts caused by the height of the kayak platform if it were raised above the height of the existing dock which would be in their line of sight, and also concerned that the glass guard rails had a potential to become cloudy over time and create another barrier to this line of sight. Both neighbors had concerns that the guard rails could potentially allow the currently open pier to be used as an extension of the existing exterior deck to the rear of the house and allow more outdoor activity in the area.

Staff determined that the kayak platform could have resulted in substantial view impacts but if lowered would not have and determined that the guard rails, whether utilizing glass or other materials, could have intruded into views and had the potential to result in these outdoor activities and therefore, staff approved it subject to conditions of approval.

Mr. Watrous said there are two grounds upon which the appeal is based. The first is that the guard rails are necessary for safety purposes. Staff confirmed with the Tiburon Building Official that the Building Code does not require guard rails for safety purposes on piers. Some piers are designed with safety railings but others are open to provide for better access for boats, kayaks and other water craft without having to lift anything over the railings. He said there are numerous examples of piers that do and do not have guard rails around the peninsula.

Staff also notes that the house on the site has a deck to the rear adjacent to the pier which is surrounded by guard rails which, in that case, is required by the Building Code for safety purposes, but this deck has become a storage area and outdoor entertainment space and staff felt it was a legitimate concern that this space could be increased and expanded onto the pier if the guard rails were in place.

The second ground was that the view impacts of the glass guard rails can be reduced by installing cable rails instead. After the appeal was filed, the applicants submitted revised plans which are at the back of the sets of plans in the packet. These plans would replace the glass rails with horizontal cable steel rails that would be less visible in terms of having them cloud up over time, but they still would not provide unfettered view lines across the pier for the home at 2306 Mar East Street, and the cable rails could still create the potential for use of the pier as an outdoor activity space.

In reaching a decision, the Planning Division staff attempted to balance the applicant's stated need for safety against the potential impacts on the neighboring properties and believes that the pier can still be used for its intended purpose of providing water oriented recreational opportunities without the requested guard rails. Therefore, staff recommended that the Commission hold a public hearing, take testimony on the appeal, deliberate, and if prepared to do so, indicate its intentions regarding the appeal and direct staff to return with an appropriate resolution for consideration at the next meeting.

Commissioner Weller asked if the application would require review by BCDC. Mr. Watrous said that this sort of construction work requires BCDC approval and this is the initial step. He said BCDC does not review or make any decisions on the application until the Town grants its discretionary approvals.

Vice Chair Williams noted that the revised plan would place the kayak lift in the middle of the pier and asked if staff had an opinion as to how that would change the conditions. Mr. Watrous deferred to the applicant on this.

Peter Clark, Clausen Engineers, representing Mark and Racia Blumenkranz, owners/appellants, described the original lift proposal and the modified design. He showed photos of the pier and the height of other docks in the area. He said that the pier height creates a very large drop to the water and said that there is no adjacent land site area to launch kayaks, paddle boards and other personal watercraft.

He said that the original proposal called for a cantilevered platform lift which is similar to a boat lift and rises up and down on tracks and would increase the dock size by 72 square feet. He said that to address the neighbors' concerns about increasing the size of the dock they proposed a no-profile boat lift in the center of the pier head. However, he said that recently they heard concerns from neighbors that this would open up the ability for them to store boats or a jet ski on the pier. In response to a question from Commissioner Corcoran, Mr. Clark confirmed that they were now going back to the original approved design but with modifications to address additional concerns.

Commissioner Corcoran asked if the lift would raise all the way up to the deck level or would it stop a couple of feet below deck level. Mr. Clark said that the lift would go all the way up to deck level, but it would not have any infrastructure above deck that a standard boat lift/platform lift would have. He stated that they proposed to eliminate two portions of the fixed pier indicated in the triangle gusset panels to mitigate the concern about net increase in Bay fill. He noted that the electric lift motors make barely any noise.

Commissioner Corcoran asked if the revised proposal was a request to modify the condition of approval requiring that the platform at its highest point be at least one foot below the pier. Mr. Clark said no, but that they would simply keep the platform at a point beneath the surface of the pier, but would raise it up when someone would be stepping onto the platform. He said that they did not want a difference in height in an area without a guard rail on a fairly substantial drop with a potential trip hazard that could be created by a one foot drop. He said that when the platform was not in use, it would be kept beneath the surface of the deck. Mr. Watrous said that Mr. Clark's description of the design would give the platform the ability to come flush with the deck and that would be require a modification of that condition of approval. Mr. Clark agreed and said they would ask to modify that condition.

Mr. Clark presented photos of other docks in the vicinity and samples of the proposed decking. He said that their goal with the perimeter guard rail was primarily for safety to mitigate liability and also to meet the code requirements. He presented photos of other guard rails in the area and described the cable railing that they now proposed instead of a continuation of the existing glass

panel railing. He said that they understood the concerns of the abutting neighbors that glass railings would get cloudy if not cleaned on a regular basis and could block views.

Mr. Clark offered a condition of approval that would prevent the storage of any accessory structures such as furniture, umbrellas, boats, etc. or anything seaward from the existing gate on the pier. He said that this would prevent this area from being a perceived extension of the living space and they hoped that this would mitigate any concerns that this would be a living room on the water.

Mr. Clark quoted from portions of the residential building code and stated that these code sections require guard rails "on waterfront bulkheads, fixed piers and gangways." He said that they interpret this as a requirement for such guard rails on docks. Mr. Clark stated that the flagpole on the dock has been a point of contention in the local area for a long time and they offered to remove it in its entirety to help with neighbors' views.

Mark Blumenkranz, applicant/appellant, said that he is professor at Stanford and was Chair of the Ophthalmology Department for the last 18 years. He said that his only concern about the guard rail was purely about safety. He felt that it was a moral and legal imperative that people who are using the dock to enjoy the water not be subject to the possibility of any inadvertent fall into the water. Based upon his experience as a physician, he said that an inadvertent and uncontrolled fall 14 feet down into the water due to a slip or poor visualization into 4 feet of water, with the potential to hit rocks at the bottom, the inability to be unable to extricate oneself from both shorelines which are blocked, and the possibility for a three-knot current to carry them up to a mile away within 15 or 20 minutes, was an unacceptable hazard. He recognized that people have lived occasionally with these piers without railings but such an accident even one time would be a tragedy and he would be unlikely to invite anyone to come out on the pier for fear of an accident. Dr. Blumenkranz described himself as an active seaman who is very comfortable around the water and not afraid. He said that he wears a helmet when he rides a bicycle and when he sails he has stanchions and guard rails around the boat, and he believed that this was a mandatory safety feature for this dock and pier.

He said that virtually every single fixed pier on Mar East Street, West Shore Drive and Beach Road and certainly all municipal piers have a protective guard railing. He asked that the Commission grant them the right to install railings for the safety of their family, friends and visitors, and for the community. He said that they want to live in harmony with their neighbors, appreciate their concerns about visibility and storage and they hope that with the mitigations provided, the Commission will feel they have done everything they can to show that this would be a net benefit to the community.

Vice Chair Williams opened the public hearing.

Mark Dickinson spoke in favor of the appeal and in favor of the railings. He stated that there seemed to be a problem with consistency on rulings on Mar East Street lately. He stated that the railings were necessary for the aforementioned drop to the water. He noted that a similar project at 2310 Mar East Street was just approved with a kayak lift and railings, even though he and another neighbor expressed concerns of changed views and view issues. He added that both

neighbors had large glass enclosures around their decks for safety reasons and he asked why a different decision was made in this case.

Magdalena Yesil said they are the neighbors just to the east. She said that in Tiburon every house is situated a little differently on the land and one person's view, even though they may be next door, is actually very different than someone else's view. She said that they have a single-story home and all other homes on Mar East Street are multi-story. She said that the most valuable thing about their house is this view of the Golden Gate Bridge through the subject pier and whatever happens there would be significant to their view and to their privacy. She presented photos of her views and hand-drawn renderings of the proposed railings and said that it would affect their views. She said she used the same structural engineer as the applicant to design their own pier and he described the difference between a pier for nautical and marine use and a deck for day to day use, summarizing that anytime piers are enclosed they turn into boat and furniture storage, although she appreciated the applicant stating that they would not do that.

Commissioner Corcoran asked Ms. Yesil for her thoughts on the revised proposal for the kayak platform to allow it to come up flush with the level of the pier but kept at a lower level anytime it is stored. Ms. Yesil said that it is very hard to actually police such a requirement and that is why they encouraged a mechanism design that would not allow the lift to come above a certain point. She said that if the lift was down one foot that would be like a step down.

Commissioner Corcoran asked Ms. Yesil if there is any amount of safety railing she would support and, if so, where she would want it to end. Ms. Yesil said that the applicant for the dock expansion at 2304 Mar East Street lived at the subject home for multiple years with his two daughters said that their kids played on the enclosed deck and felt that it was better to not have a sense of false safety on the pier. She said that she could support safety railings to about where the current deck ends.

Commissioner Weller asked if Ms. Yesil would oppose railings extending to the point where the current dock widens. She said that it would still affect their view of Lyford Cove and they would not feel comfortable supporting that.

Shauna Dickinson stated that when the owner of 2310 Mar East Street lived in the Blumenkranz' home he was renting and now that he is a homeowner he has also installed guard rails on his dock. She described how they met with him one-on-one as neighbors and mitigated their concerns without having to come before the Commission in appeal. She stated that the applicant should have the opportunity to provide a safe environment for their family and young children.

Colleen Mahoney, architect, representing Charles and Mik Flynn, presented photographs taken from their home. She said that the Commission needed to consider that this pier juts out further than others and she thought that it was disingenuous to compare it to public piers. She felt that the Planning Commission should not decide a question about the Building Code. She said that she was unsure whether her clients would accept any kind of railing out on the pier, but she thought that the proposals were in a good direction. She said that they would accept the previous kayak platform location if it was limited to stop below the level deck height. She stated that the houses are very close to one another and the distance from their deck or their breakfast room to

these kayaks would be very close. She said that the Town probably would not be able to control the use of the pier.

Jim Wickett stated that his recollection of the pier at 2310 Mar East Street was that the railings do not go all the way out so there were differentiations between the pier and deck spaces. He stated that all piers in the vicinity that are enclosed have furniture on them or are used for boat storage. He appreciated that the applicant indicated that this would not happen, but in the next 20 years there could be new owners and situations, and he questioned the potential for enforcement.

Julie Croker said that her home was used as an example in many of the photos and she believed that the pier would block views from her house. After presenting a photo to the Commission, she determined that she was mistaken about which pier was in her view.

Mark Blumenkranz said that because he is an ophthalmologist he can say that Ms. Yesil's illustrations were not an accurate representation of what the railings would look like. He said that the cable railings would be 1/8" thick and virtually imperceptible at about 30 or 40 feet away. He explained that they started with glass railings because they thought it would be better, but switched to wire, which would not get cloudy with salt water and precipitation and the only visible part would be the thin stanchions, with no top railings. He reiterated that his concern was all about safety. He said that although it is rare to fall off of a dock, they would not want a situation where that rare event occurred and somebody died. He said that this was not an architectural accent for him but it is a matter of life and death, and he did not want the moral responsibility or liability that would come if a small child or elderly adult were to slip and fall.

Commissioner Weller asked Mr. Watrous to comment on staff's view of applicability of the code sections raised by the applicant regarding requirements for guard rails on decks. Mr. Watrous said that frankly there was no one at the meeting qualified to make that determination and that was why he asked the Building Official to make that determination. Mr. Watrous stated that excerpting a code section was not necessarily a legal interpretation and that is why he asked the Building Official specifically about the Town's adopted codes, which stated that railings are not a requirement.

Commissioner Corcoran asked Mr. Watrous for comments about the proposed condition of approval for storage on the pier. Mr. Watrous said that the Town was not in a position to become deck chair policemen and this would be to enforce. He stated that the Town tries to avoid whenever possible conditions of approval that require on-going maintenance, whether it is how tall a tree can grow over time or whether it gets trimmed back, or whether a certain object or furniture is on a space or not, and having to become an on-going enforcement issue. He confirmed that the Town would respond to calls from homeowners and that there was a similar concern with the height of the platform. He said that if the platform was designed so it can come up to deck level and the Town relies on whether people keep it at that level or not, it becomes a difficult and on-going enforcement issue.

Commissioner Welner noted that the Commission sometimes imposes conditions with regard to noise and other issues that require response through complaints. Mr. Watrous said that such conditions of approval rarely, if ever, are imposed on residential applications.

Mr. Clark displayed the proposed dock redesign. Mr. Watrous pointed to a location at the end of the proposed kayak platform and Commissioner Corcoran said this is what Ms. Yesil indicated would be acceptable. In response to a question from Commissioner Corcoran, Dr. Blumenkranz said that there needs to be adequate room for people to congregate to get on a boat or the lift, but he was open to discussing it. In response to a question from Commissioner Weller, Dr. Blumenkranz said that it would be a better safety feature than what they have now, but less than what they would like. He said that this would mean that part of the dock would never be used. He also noted that there would not be any protection from an accident when maintaining the dock.

The public hearing was closed.

Commissioner Weller commended the applicant for considering the neighbors' concerns and for being willing to consider alternatives. He believed that the Commission cannot force everybody to live with what was built long ago, but at the same time, people buy homes in Tiburon because of the views and those values reflect the views, so the Commission should balance progress with preservation. He thought that he could support this proposal with a couple of conditions, the first of which was accepting the very gracious offer by the applicant to remove the flagpole, which would be a gigantic improvement in the view corridor. He did not believe that the need to lift up the platform to the level of the pier outweighed staff's concerns in requiring the condition of approval and he did not see a safety issue with having the platform stop 1 foot short of the pier level. Third, he said that he could allow the guard railing to a certain extent. He recognized the potential view impacts and future use of this dock, stating that he had repeatedly seen in Tiburon that when uses of property are permitted, they happen whether that is the intent or not, and this pier would be a place where people congregate if it is enclosed. He said that he could not support the enclosure as it was not a legal requirement, according to staff.

Commissioner Weller stated that he would support the application with 3 conditions:

1. That the flagpole be removed;
2. That the lift be required to stop 1 foot below the pier level, as staff suggested; and
3. That the railing extend out to the point where the hammerhead element of the pier starts.

He said stopping the railing there would allow continued access to the pier in the same manner as the applicant has right now.

Commissioner Corcoran said that he understood why a railing is not mandated because these are water uses and often a railing gets in the way of boating activities. However, he believed that this was a reasonable request and he thought that the Commission had an obligation to try and satisfy the safety needs of the homeowner. He said that he would be very concerned about walking on the deck and slipping in fair weather conditions, much less if it was raining or misting.

Commissioner Corcoran summarized 6 issues to consider:

1. The maximum height of the kayak lift it can go to, whether it should be flush with the deck or at least 1 foot below;

2. Whether to implement a condition to leave the lift at a lower level when not in use;
3. A condition allowing no furniture or kayak storage on the deck;
4. How far the safety railings should extend;
5. Removing the flag pole; and
6. Removing the triangle sections of the pier next to the hammerhead area.

Commissioner Corcoran said that he was somewhat concerned about the idea of requiring the kayak lift to stop 1 foot below because stepping down on it could create a safety issue. He suggested possibly adding a step to make it easier to access, but he is concerned about enforcing this. He supported allowing the safety railings to the edge of the hammerhead and enclosed at the end, which would lessen the view impact on the immediate neighbors while also providing safety. He expressed an interest in removing the triangle sections but he did not think this should be mandated. He also supported removal of the flagpole. He expressed concerns about the enforcement and effectiveness of a condition to not have any furniture on the deck, but felt that this condition should be added if the Commission allows the safety railings, although he had doubts that that would continue to be respected 10-15 years from now.

Mr. Watrous said that if the Commission extended the guard rails to the hammerhead, a much narrower area would be enclosed which would then be less likely to be used for entertaining than a larger area. Commissioner Weller said that was why he favored that approach.

Commissioner Welner said that he felt a bit differently and was very supportive of what the applicants have done. He said that he was somewhat troubled by some of the assertions that have been made and stated that there is no absolute right to maintain one's view as it currently is, especially if it competes of the rights of the applicant to make use of his pier and to ensure safety for his family and guests. He said that the applicant had made many efforts to modify the proposal to make it as low impact as possible, including removing the flagpole, decreasing the pier area and attempting to use an unusual lift design. He felt that it would be shameful for the Commission to deny the railings if someone was later injured. He thought that the use of the narrow railing with a very minimalist style would ensure people can be safely on the pier. He said that the Commission did not discuss whether thought should be given for use by disabled persons, although this is not a public space so there is no legal requirement for that. He believed that there is an obligation to not intentionally or recklessly approve a design that completely blocks neighbors' views, but he would feel very troubled if the Commission were to require any limitation on a safety railing like the one being proposed. He said that in reviewing images of the pier and possible railings, the flagpole dwarfs the Golden Gate Bridge and the net impact on the view of eliminating the flag pole and putting up the railings would be a terrific improvement. He recognized the concerns of staff about monitoring conditions of approval, but he felt that conditions that prohibit permanent storage and require the kayak lift to be not flush when not in use are valuable to put people on notice that these are issues that people care about.

Commissioner Welner disagreed with Commissioner Weller that eliminating the hammerhead portion of the railing would decrease view blockage, as he believed that railing in that area would not be much of a view impact. He believed that the Commission should hold off on its decision about the railing until the Town Attorney has provided an opinion on whether it is required. He said that he would approve the project as is with the elimination of the flagpole,

with conditions about allowing no objects on the pier, and that the lift be kept below the pier level when not in use. He said that he would be strongly opposed to any effort to reduce the railing.

Vice Chair Williams said that she worried about making a hasty decision when there was potential input on the legal issue that would benefit the Commission. Mr. Watrous said that he thought that the question about whether safety railings are required for code purposes or not would become moot if the Commission intended to allow the railings to be extended. He said that it appeared that there was a consensus of the Commission to acknowledge that the railings were a good idea from a safety standpoint, so it did not necessarily matter what the code states.

Vice Chair Williams said that removing the flagpole was a great idea. She commended the applicants for their efforts to incorporate all the neighbors' perspectives and thoughtfully coming back with changes. She felt that the feedback from neighbors was instructive and useful. She said that she was inclined to defer to staff regarding the height of the lift, as they have had the benefit of seeing the area and talking with parties involved. She felt that removing the triangular sections was acceptable if the applicant wants to remove those areas. Regarding the safety rail, she stated that the Commission must balance opinions of each neighbor, each house, along with view and safety issues. She said that each pier is different and that is why there are different outcomes. She thought that this pier would have a fairly large impact on views and she was concerned about this becoming an outdoor recreational space. She said that the applicant's pier looks more like a deck and is fairly large, and enclosing it could turn it into a deck which would become an entirely different use for that pier. She stated that the function of piers is to allow access to waterways and for people to enjoy marine areas and not as an extended deck out into the water. She acknowledged, however, that the pier is also unique because it is high up and looks very dangerous and this potentially trumps views.

She said that the applicants and neighbors were trying hard to work this out and she did not want to remove negotiation from the table. She felt that bringing the railing back to the point of the hammerhead would significantly protect the view of the Golden Gate Bridge. She agreed that the photograph did not show how the railing would actually look, and she struggled with the Commission setting an outer limit for the railing while still having safety issues unresolved.

Commissioner Corcoran agreed with Commissioner Welner and said that he would feel more comfortable getting the Town Attorney's opinion as to the building code issues. He asked that the next staff report include consideration of the Hillside Design Guidelines regarding views that would be relevant to this discussion. He also asked for better information on pictures provided by neighbors as to where they are taken from, including whether it is a primary part of the residence or some other area.

Commissioner Welner said that this was not a decision about whether or not the applicants should be able to build this pier, but whether the applicants should be able to use their pier safely. He urged the Commission to look at the pier as it exists and the applicants should be able to use it safely. He thought that the idea of not putting up a railing so it feels less comfortable and less safe and therefore will not be used as a deck was backwards reasoning.

Commissioner Weller agreed that the railings would add to the safety, but he is very sure, given his history on this Commission and the DRB, that when people create living spaces, they use them, and that someone will use this deck on a regular basis if there is a railing around it. He said that he respects the safety concern and that was why he proposed a compromise to protect the safety of people using the deck for the marine uses proposed, but not to permit further uses with railings that are not required by law. He said that he was happy to follow Commissioner Corcoran's suggestion to obtain a more formal review from the Town Attorney as to the application of the code sections to this particular circumstance. However, given the balancing of issues he believes is the Commission's obligation, he said that he was not convinced by Commissioner Welner's argument to change his view about permitting the railing for the safety reasons but not extending it all the way to the end of the pier.

Vice Chair Williams said that she looked very closely at the ordinances for the marine zone to understand uses of structures in this area and she did not see anything suggested on the issue of use, as there seemed to be a distinction between decks and piers but nothing to suggest there is a right to unfettered use of piers to congregate.

Mr. Watrous said that staff would consult with the Town Attorney to 1) confirm whether the code sections cited by the applicant are correct in their interpretation; and 2) whether modifications to the pier would trigger the need for safety railings. He noted that from a technical standpoint, this is a tidelands permit application which deals with the use issues, while the subsequent design review application would deal with views through the application of the Hillside Design Guidelines. However, he said that the next staff report can provide the Commission with background information about how the guidelines deal with view impingement.

Commissioner Weller asked and confirmed that the applicant agreed with a continuance. Mr. Watrous suggested a continuance to the May 11th or May 25th meeting.

Commissioner Welner suggested that the applicant prepare a more accurate rendition of the railings.

Commissioner Weller said the Commission has always been very appreciative when neighbors try to cooperate and encouraged access to neighboring homes to help determine views to assist the Commission making a more informed decision.

ACTION: It was M/S (Weller/Corcoran) to continue the public hearing to the May 25, 2016 meeting. Motion carried: 4-0.

MINUTES

3. Planning Commission Minutes –Meeting of April 13, 2016

ACTION: It was M/S (Corcoran/Weller) to approve the meeting minutes of April 13, 2016 as submitted. Motion carried: 4-0.