

BELVEDERE PLANNING COMMISSION
REGULAR MEETING AGENDA
November 16, 2021, 6:30 PM
REMOTE MEETING

COVID-19 ADVISORY NOTICE

On March 3, 2020, Governor Newsom proclaimed a State of Emergency due to the COVID-19 pandemic that remains in effect. This meeting will be held remotely consistent with Executive Order N-29-20 and Assembly Bill 361, modifying provisions of the Brown Act to allow remote meetings at the current time. Members of the Planning Commission and staff will participate in this meeting remotely. Members of the public are encouraged to participate remotely via Zoom or telephone pursuant to the information and link below. Public comment will be accepted during the meeting. The public may also submit comments in advance of the meeting by emailing the Director of Planning and Building at: iborba@cityofbelvedere.org Please write "Public Comment" in the subject line. Comments submitted one hour prior to the commencement of the meeting will be presented to the Planning Commission and included in the public record for the meeting. Those received after this time will be added to the record and shared with Planning Commission member after the meeting.

City of Belvedere is inviting you to a scheduled Zoom meeting.

Topic: Belvedere Planning Commission Meeting

Time: November 16, 2021, 06:30 PM

Join Zoom Meeting

<https://us02web.zoom.us/j/81488289654?pwd=RHZVMEIxQzJpNWcwOGNXNkZORGphQT09>

Webinar ID: 814 8828 9654

Passcode: 379490

888 -788- 0099 (Toll Free)

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The City encourages that comments be submitted in advance of the meeting. However, for members of the public using the Zoom video conference function, those who wish to comment on an agenda item should write "I wish to make a public comment" in the chat section of the remote meeting platform. At the appropriate time, the Meeting Host will allow oral public comment through the remote meeting platform. Any member of the public who needs special accommodations to access the public meeting should email the **Director of Planning and Building**, iborba@cityofbelvedere.org who will use her best efforts to provide assistance.

HEARING PROCEDURE:

The Planning Commission will follow the following procedure for all listed public hearing items:

- 1) The Chair will ask for presentation of the staff report;
- 2) The Commissioner will have the opportunity to question staff in order to clarify any specific points;
- 3) The applicant and project representative will be allowed to make a presentation, not to exceed 10 minutes for large, or 5 minutes for small, projects, as total for the applicant's design team;
- 4) The public hearing will be opened;
- 5) Members of the audience in favor or against the proposal will be allowed to speak, for a maximum of 3 minutes per speaker;
- 6) The applicant will be given an opportunity to respond to comments made by the audience, for a maximum of 5 minutes total for the applicant's design team;
- 7) The public hearing will be closed; and
- 8) Discussion of the proposal will return to the Commission with formal action taken to approve, conditionally approve, deny or continue review of the application.

A. CALL TO ORDER OF REGULAR MEETING

B. OPEN FORUM

This is an opportunity for any citizen to briefly address the Planning Commission on any matter that does not appear on this agenda. Upon being recognized by the Chair, please state your name, address, and limit your oral statement to no more than three minutes. Matters that appear to warrant a more-lengthy presentation or Commission consideration will be agendaized for further discussion at a later meeting.

C. REPORTS

The Reports agenda item consists of any oral reports from standing Planning Commission committees (if any), an individual member of the Planning Commission, and staff.

D. CONSENT CALENDAR

The Consent Calendar consists of items that the Planning Commission considers to be non-controversial. Unless any item is specifically removed by any member of the Planning Commission, staff, or audience, the Consent Calendar will be adopted by one motion. Items removed will be considered in the sequence as they appear below. If any member of the audience wished to have an item removed, follow the remote meeting procedures referenced above, state your name in the “chat” section of the remote meeting platform, and indicate the item. If you do not have access to the Zoom meeting platform, please email the Director of Planning and Building, Irene Borba at iborba@cityofbelvedere.org and indicate that you would like to remove a consent calendar item and identify the item. After removing the item, the City will call for comment at the appropriate time.

1. Draft **Minutes of the October 19, 2021**, regular meeting of the Planning Commission.
2. Consideration of a Conditional Use Permit application for Tiburon Fitness Club expansion located at **1550 Tiburon Boulevard**. Applicant: Tiburon Fitness Club; Property Owner: Belvedere Land Company. *Staff recommends that the Commission adopt the draft Resolution of approval.* No recusals.

E. PUBLIC HEARINGS

3. Design Review for a dock extension located at **44 San Rafael Avenue**. Property owner and applicant Richard Laiderman and Jung-Wha Song. *Staff recommends that the Commission approve the proposed project.* Recused: Vice Chair Carapiet.
4. Design Review for a fence and concrete stepping-stones located at **475 Belvedere Avenue** along the property boundary adjacent to the property known as Artist View. Applicant: Debbie Peterson. Property owner Michael Davis & Janet Johnstone. *Staff recommends that the Commission deny the requested application for design review but has also provided the Commission with a Resolution of approval should the Commission be able to approve the project.* No recusals.
5. Public Hearing to consider recommending City Council approval of Amendments to the Zoning Code and adding a new Title to the Zoning Code; Title 22 for the **Objective Design and Development Standards (ODDS)**. *Staff recommends that the Commission forward a favorable recommendation to the City Council recommending approval of the proposed Ordinance Amendments.* No recusals.

APPEALS: The Belvedere Municipal Code provides that the applicant or any interested person may appeal the action of the Planning Commission on any application. The appeal must be in writing and submitted with a fee of \$1026.00 (applicant) or \$776.00 (non-applicant) not later than ten (10) calendar days following the date of the Planning Commission action. Appeals received by City staff via mail after the tenth day will not be accepted. Please note that if you challenge in court any of the matters described above, you may be limited to raising only those issues you or someone else raised at the public hearing described above, or in written correspondence delivered to the Planning Commission at, or prior to, the above-referenced public hearing. [Government Code Section 65009)b(2)].

NOTICE: WHERE TO VIEW AGENDA MATERIALS

Staff reports and other writings distributed to the Planning Commission are available for public inspection at the following locations:

Online at www.cityofbelvedere.org

Belvedere City Hall, 450 San Rafael Ave, Belvedere (Writings distributed to the Planning Commission after the posting date of this agenda are available for public inspection at this location only);

Belvedere-Tiburon Library, 1501 Tiburon Boulevard, Tiburon.

To request automatic mailing of agenda materials, please contact the City Clerk at (415) 435-3838.

NOTICE: AMERICANS WITH DISABILITIES ACT

The following accommodations will be provided, upon request, to persons with a disability; agendas and/or agenda packet materials in alternate formats and special assistance needed to attend or participate in this meeting. Please make your request at the Office of the Planning Department or by calling (415) 435-3838. Whenever possible, please make your request four working days in advance of the meeting.

Items will not necessarily be heard in the above order, not, because of possible changes or extenuating conditions, be hear. For additional information, please contact City Hall, 450 San Rafael Ave, Belvedere CA 94920. (415) 435-3838.

**City of Belvedere
Regular Planning Commission
Meeting**

November 16, 2021

Conflict of Interest Statement

Planning Commission Member:

If you live within 500-feet of any property involved in any matter coming before the Commission at this meeting, please immediately let staff know and be prepared to disqualify yourself from participating in any Planning Commission consideration regarding the matter(s). *After publicly announcing your disqualification, you should step down from the dais and retire to the City offices where you cannot be seen or heard from the Council Chambers. If you wish to say something as a private citizen, you may do so during the time public comments are solicited from the audience. Before leaving the Chambers, let staff know if this is your intention so they can summon you at the appropriate time to make your statement. When the matter is concluded, a staff member will let you know it's time to come back in and proceed on to the next agenda item.* Disqualification is automatic if you reside within 500 feet of the property that is the subject of the matter being considered by the Planning Commission.

44 San Rafael Avenue
Carapiet

1550 Tiburon Blvd
None

475 Belvedere Avenue
None

BELVEDERE PLANNING COMMISSION

MINUTES

REGULAR MEETING

MEETING HELD VIA ZOOM

OCTOBER 19, 2021, 6:30 P.M.

A. CALL TO ORDER OF THE REGULAR MEETING

Chair Peter Mark called the regular meeting to order at 6:30 p.m. The meeting was held via Zoom video conference. Commissioners present via Zoom: Peter Mark, Ashley Johnson, Nena Hart, and Larry Stoehr. Absent: Marsha Lasky, Pat Carapiet and Claire Slaymaker. Staff present: Director of Planning and Building Irene Borba, Senior Planner Rebecca Markwick, City Attorney Emily Longfellow, and Permit Technician Nancy Miller.

B. OPEN FORUM

This is an opportunity for any citizen to briefly address the Planning Commission on any matter that does not appear on this agenda. Upon being recognized by the Chair, please state your name, address, and limit your oral statement to no more than three minutes. Matters that appear to warrant a more-lengthy presentation or Commission consideration will be agendized for further discussion at a later meeting.

No one wished to speak.

C. REPORTS

There were no reports.

CONSENT CALENDAR

The Consent Calendar consists of items that the Planning Commission considers to be non-controversial. Unless any item is specifically removed by any member of the Planning Commission, staff, or audience, the Consent Calendar will be adopted by one motion. Items removed will be considered in the sequence as they appear below. If any member of the audience wishes to have an item removed, follow the remote meeting procedures referenced above, state your name in the “chat” section of the remote meeting platform, and indicate the item. If you do not have access to the Zoom meeting platform, please email the Director of Planning and Building, Irene Borba at iborba@cityofbelvedere.org and indicate that you would like to remove a consent calendar item and identify the item. After removing the item, the City will call for comment at the appropriate time.

MOTION: To approve the Consent Calendar for Item 1 as agendized below:

MOVED BY: Larry Stoehr, seconded by Ashley Johnson

VOTE: AYES: Peter Mark, Ashley Johnson, Larry Stoehr.
 NOES: None
 ABSTAIN: Nena Hart, due to absence from the September 21, 2021, meeting.
 RECUSED: None
 ABSENT: Pat Carapiet, Claire Slaymaker, Marsha Lasky.

1. Draft **Minutes of the September 21, 2021**, regular meeting of the Planning Commission meeting.

D. PUBLIC HEARINGS

2. Design Review for a dock extension located at **44 San Rafael Avenue**. Property owner and applicant Richard Laiderman and Jung-Wha Song. *Staff recommends that the Commission approve the proposed project.* Recused: Commissioner Carapiet.

Senior Planner Rebecca Markwick presented the staff report. A slide show accompanied her remarks.¹

Richard Laiderman, 44 San Rafael Avenue, owner and applicant, stated that he requests approval of the proposed dock extension project for better access to the Lagoon and boat storage. The project will be attractive and not inconsistent with other properties in the Lagoon Zone. He has support of two neighbors who will also speak tonight.

Open public hearing.

Bob Miller, son of property owner Lily Miller of 48 San Rafael Avenue, stated that the project will negatively impact his mother's privacy, access, and views of the water. The neighbors parallel to the applicant are not impacted but those who are perpendicular will be able to see it and will be negatively impacted. He understands that the dock extension will affect the maintenance drain servicing of the Lagoon as well. The recommendation of staff to reduce the size of the extension by 50% might be more acceptable but they would like to see this in the form of new story poles before commenting.

Commissioner Stoehr asked about the terms of the existing easement, as to what is allowed.

Mr. Laiderman replied he had sent in a copy of the easement document prior to the meeting. His understanding is that the easement is only for ingress and egress to the Lagoon. There are no other guarantees specified. The current view from 48 San Rafael Avenue is of the Lagoon outlet valve. The easement extends far out into the water and there is plenty of room for water access.

Commissioner Stoehr asked the applicant if it would it be possible for Mrs. Miller to build a dock of her own in the easement under the terms of the agreement.

Mr. Laiderman stated there is already a deck so it might be possible to build a small dock and he would not object if it was not too far out.

David and Sprague Von Stroh, 1 Hilarita Circle, spoke to of their concerns that the maintenance of this corner of the Lagoon may be impacted. This issue was raised in conversation with Mr. Ruppert who does this work for the BLPOA. They did not receive any notification from the BLPOA of their signoff. Ms. Von Stroh stated that due to their property's orientation to the proposed dock extension, there would be view and privacy impacts on them.

Robert Huret, 34 San Rafael Avenue, stated he and his daughter Deborah Op den kamp, who is owner of 40 San Rafael Avenue, both support the project at 44 San Rafael Avenue. They have had their own docks since the 1990s and they have a similar situation with the property at 30 San Rafael Avenue to their left with an access easement and dock extending into the Lagoon across their property. This arrangement has created no issues. The Lagoon drainage gate is on a BLPOA easement at 40 San Rafael Avenue. They often see Mr. Ruppert working there and they believe if there were any issue with this proposal that this would have been already been raised by the BLPOA.

Michelle Barnowski, new owner of 3 Hilarita Circle, is interested if there is any discrepancy in the information concerning the maintenance issue if this already has approval of the BLPOA. She would be concerned about this aspect.

Mr. and Ms. Von Stroh commented that the owners of 40 and 44 San Rafael Avenue are significantly farther away than they are. The corner lot on the opposite side of the Lagoon 'cul-de-sac' was purchased with the docks already where they are. They purchased their own property without anything there.

Close public hearing.

¹ The presentation is archived with the record of the meeting.

Ms. Markwick stated that the City sent the application for review by the BLPOA and they understand the parameters of the application. The BLPOA has given their approval, pending any City approval of the dock expansion.

Mr. Laiderman believes the concerns about the maintenance issue have already been addressed by the BLPOA. In general, for the owners of 1 Hilarita Circle, there is no effect on their access. He understands the new dock area will be in their view. However, their view is already full of docks and the Lagoon is not known as an area of privacy. He is asking to have better access to the Lagoon with this dock extension.

Close public hearing.

Commissioner Stoehr stated he is on the Board of the BLPOA and he did review this application in that role. The BLPOA does not approve anything; they will indicate if they have a problem with any application. This was reviewed and Mr. Ruppert reviewed the access to the 40 San Rafael Avenue conduit to Richardson Bay in their easement. Mr. Stoehr also did speak to Mr. Ruppert about neighbor concerns relative to Mr. Ruppert's access to the corner involved. He said Mr. Ruppert said it would be more difficult for him to maneuver but he can still get in there to retrieve debris.

Commissioner Stoehr stated when he visited Mrs. Miller at 48 San Rafael Avenue, he found she was very upset about impacts on her views. He spoke to her about the idea of building her own small water-level dock which he believes she favored. He is encouraged to hear that the applicant might consider that idea. If that is the case, then he can support the project as proposed.

Commissioner Johnson visited 48 and 44 San Rafael Avenue and spoke with the neighbors from 1 Hilarita Circle. She stated that the two letters of support from the neighbors to the left of the project are coming from parties who are minimally impacted. The neighbors on the corner would be significantly impacted in decreased views, privacy and access. If the size were reduced in length, there might be a better situation.

Commissioner Hart has visited both neighbors and viewed the site from the water as well. She stated that the coverage of the water with big docks is unattractive. Reviewing the project according to the Design Review findings, she believes under Section 20.04.120 Relationship of structure to the site, this application does not merit her support. She does not see this as being harmonious or benefiting this end of the Lagoon. Adding that much coverage of the water for boat storage is not something that is good for neighbors to have to view. She cannot make the findings for the application.

Chair Mark visited both the applicant's and neighbor's properties. As properties continue to develop out towards the water it will create a trend for every property to do the same. He concurs with Commissioners Hart and Johnson; just because similar docks exist is not sufficient reason to approve the project.

Commissioner Stoehr stated that there have been many expansions of existing docks and bulkheads approved at the staff level, and all have had BLPOA reviews. The BLPOA mainly is interested in preventing any expansion of docks into their property. Here the 90-degree corner of the Lagoon presents a unique situation.

Chair Mark stated that the City makes the broader decisions regarding dock expansions. He is not supportive of expansion of properties outwards into the water even if it is on their own property. When the Subcommittee did its work on bulkheads in the Lagoon, the impact of projects on the enjoyment of the Lagoon was also considered and is relevant here.

Chair Mark asked the applicant if he would be willing to allow a continuance for additional revision of the proposal.

Mr. Laiderman replied that he would accept a continuance.

Belvedere Planning Commission Minutes

October 16, 2021

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MOTION: To continue the item for **44 San Rafael Avenue** to a future meeting of the Planning Commission.

MOVED BY: Peter Mark, seconded by Ashley Johnson

VOTE: AYES: Peter Mark, Larry Stoehr, Nena Hart, Ashley Johnson
NOES: None
ABSTAIN: None
RECUSED: Pat Carapiet
ABSENT: Marsha Lasky, Claire Slaymaker, Pat Carapiet

Meeting was adjourned at 7:20 PM.

PASSED AND APPROVED at a regular meeting of the Belvedere Planning Commission on November 16, 2021, by the following vote:

VOTE: AYES:
NOES:
ABSTAIN:
RECUSED: Pat Carapiet, Marsha Lasky, Claire Slaymaker
ABSENT:

APPROVED: _____

Peter Mark, Planning Commission Chair

ATTEST: _____

Beth Haener, City Clerk



**CITY OF BELVEDERE PLANNING COMMISSION
STAFF REPORT**

REPORT DATE: 11/2/2021

**CONSENT CALENDAR
AGENDA ITEM: 2**

MEETING DATE: 11/16/2021

TO: City of Belvedere Planning Commission

FROM: Rebecca Markwick, Senior Planner

REVIEWED BY: Irene Borba, Director of Planning and Building
Emily Longfellow, City Attorney

SUBJECT: **Conditional Use Permit approval for a gym expansion located at 1550 Tiburon Boulevard.**

RECOMMENDATION

The applicant requests Planning Commission approval of a Conditional Use Permit for an expansion of Tiburon Fitness Club. Applications are included as **Attachment 2**.

Staff recommends that the Planning Commission conduct the required public hearing and take the following actions:

MOTION 1 Adopt the Resolution granting Use Permit approval for the property located at **1550 Tiburon Boulevard**, (Attachment 1).

PROPERTY SUMMARY

Project Address: 1550 Tiburon Boulevard
APN: 060-082-64
Project Applicant: Roberto Santo Domingo
Property Owner: Belvedere Land Company
GP Designation: C-1 Commercial
Zoning: C-1 Commercial
Existing Use: Vacant - Previously Occupied by Corner Books

ZONING PARAMETERS

There are no changes to the existing building therefore this section is not applicable to the Conditional Use Permit application.

BACKGROUND/PROPERTY HISTORY of BOARWALK SHOPPING CENTER

1980 - Planning Commission approval of 7,000 square feet of rental area.

1983 - Planning Commission approval to place a translucent plastic cover over a portion of the courtyard.

1983 - Design Review approval for installation of an ATM machine.

1998 - Design Review approval of a new Wells Fargo sign.

2011 - Conditional Use Permit approval for a gym

2013 -2017- Numerous Design Review Exemption applications for maintenance type work at the Boardwalk Shopping Center.

The subject suite, suite “O” was home to Corner Books. Corner Books was located in suite “O” from 2010-2020 and plans to open in the new library building.

PROJECT ANALYSIS

At this time, the applicant requests Planning Commission approval of a Conditional Use Permit to allow an expansion of Tiburon Fitness Club. Tiburon Fitness Club currently occupies suite “P” under a Use Permit approved in 2011. The proposed expansion would be approximately 785 square feet or about fifty percent of their current space in suite “P”. The project does not require Design Review because there are no exterior alterations, additions or other construction associated with the Use Permit application. Section 19.40.20, C-1 Zoning requires a Conditional Use Permit for specific uses, including a gym. Because this is an expansion of a gym into a larger space a Conditional Use Permit is required.

CONDITIONAL USE PERMIT

Use Permit Findings

BMC Section 19.80.030 requires the Planning Commission to make certain findings in order to grant a Use Permit. Section 19.80.030 provides that the Planning Commission may grant, or conditionally grant, a Use Permit if it finds that “requested use will not, under the particular circumstances, be detrimental to the health, safety, morals, comfort, convenience and general welfare of the persons residing or working in the neighborhood and will not be injurious or detrimental to the property and improvements in the neighborhood of such proposed use, or to the general welfare of the City.

Staff notes that as a zoning ordinance and under the plain language of the Code, analysis of a Use Permit’s impact is in the context of the proposed use’s impact on the neighborhood and persons in the area, rather than the impact on a particular individual neighbor.

It is staff’s opinion that the required findings can be made to grant the Use Permit for the reasons stated below, and as reflected in the attached draft resolution for Use Permit (**Attachment 1**). Here, as described below, the project will not be detrimental to the health, safety, morals, comfort, convenience and general welfare of people in the neighborhood, nor will the project be injurious or detrimental to property in the neighborhood, or the general welfare of the City.

Staff finds that the proposed use is compatible with other commercial and residential uses in the neighborhood. The hours of operation are standard hours of operation for commercial gym uses, there will be no additional noise with the proposed use outside of standard business hours. The

proposed site was a bookstore, adjacent to the existing gym. The existing gym on the property does not have a history of negatively impacting the community in any way, but rather is a community benefit. The gym expansion will not impact the health, safety, morals, comfort, convenience and general welfare of the persons residing or working in the neighborhood and will not be injurious or detrimental to the property, the neighborhood or to the general welfare of the City.

Interior renovations are proposed to accommodate the new gym equipment, there are no exterior modifications proposed as part of this application.

The gym is open from Monday-Saturday, 5 a.m. – 10 p.m., which are standard gym hours similar to the other gym uses in the neighborhood.

The site has 180 dedicated parking spaces. Municipal Code section 19.68.020 requires review of parking space requirements at the time a building is constructed, or if an existing building is materially enlarged. Here, there is no new building construction or material enlargement of an existing building. Therefore, the Planning Commission does not review parking spaces. In any event, staff suggests that the existing 180 dedicated parking spaces are adequate given the size of the building and proposed use.

CONCLUSION AND FINDINGS

Pursuant to Section 19.80 of the Zoning Ordinance, the Planning Commission must find that the requested modifications will not be detrimental to the health, safety, morals, comfort, convenience and general welfare of the persons residing or working in the neighborhood, and will not be injurious or detrimental to the property and improvements in the neighborhood, or to the general welfare of the City. In staff's opinion, the required findings can be made for the gym expansion use at 1550 Tiburon Boulevard.

ENVIRONMENTAL DETERMINATION

The project was reviewed under the provisions of the California Environmental Quality Act (CEQA) and the CEQA Guidelines, California Code of Regulations. The proposed project was determined to be categorically exempt from CEQA pursuant to *Section 15301 Existing Facilities* because the proposed project involves no expansion of the former use. It can be seen with certainty that there is no possibility that the activity in question may have an effect on the environment, as defined by CEQA. City action is required by January 16, 2022 or the project may be deemed approved.

CORRESPONDENCE

A copy of the public hearing notice for this item was published in The ARK newspaper and mailed to all property owners within 300 feet of the subject property. At the time of writing this staff report, Staff has not received any written correspondence.

CONCLUSION

Staff determines that all of the findings can be made for the Conditional Use as the gym expansion use will not be detrimental to the health, safety, morals, comfort, convenience and general welfare of the persons residing or working in the neighborhood and will not be injurious or detrimental to the property and improvements in the neighborhood, or to the general welfare of the City. Staff has prepared a Resolution recommending approval of the Use Permit application.

RECOMMENDATION

MOTION 1 Adopt the Resolution granting a Conditional Use Permit for the gym expansion at **1550 Tiburon Boulevard** (Attachment 1).

ATTACHMENTS

Attachment 1: Draft Conditional Use Permit Resolution
Attachment 2: Project Application and Site Plan
Attachment 3: Correspondence

CITY OF BELVEDERE
RESOLUTION NO. 2021-

**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF
BELVEDERE GRANTING CONDITIONAL USE PERMIT TO ALLOW A GYM
EXPANSION LOCATED AT 1550 TIBURON BOULEVARD**

WHEREAS, a proper application for a Use Permit has been submitted pursuant to Title 19 of the Belvedere Municipal Code for a gym expansion located 1550 Tiburon Boulevard; and

WHEREAS, the Planning Commission held a duly noticed public hearing on the requested Use Permit application on November 16, 2021; and

WHEREAS, the project has been determined to be categorically exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15301 Existing Facilities because the proposed project includes no expansion of use beyond the former use; and

WHEREAS, project is also exempted from CEQA by the Common Sense Exemption CEQA Guideline section 15061(b)(3), because it can be seen with certainty that the project will not have a significant effect on the environment; the property is fully developed with an existing commercial property and other site improvements and there are no proposed exterior modifications or increase or change in property use. The project site is categorized as a site of Medium Sensitivity for Tribal Cultural Resources; and

WHEREAS, the Planning Commission finds the proposed project, as conditioned, is in conformance with the Use Permit findings required by Section 19.80.030 of the Belvedere Municipal Code, because: 1) the requested use will not be detrimental to the health, safety, morals, comfort, convenience and general welfare of the persons residing or working in the neighborhood of such proposed use; and 2) will not be injurious or detrimental to the property and improvements in the neighborhood of such proposed use, or to the general welfare of the City for the following reasons. The proposed use is located in the C-1 Commercial zone, and this is an expansion of an existing use, which is a typical commercial use in this type of zone. The nature of the proposed use, and its consistency with the Zoning District, ensure that the Use Permit is not detrimental to the public health, nor injurious or detrimental to property and improvements in the neighborhood, or to the general welfare of the City.

NOW, THEREFORE, BE IT RESOLVED that the Planning Commission of the City of Belvedere, based on the findings set forth above incorporated herein, and based on the staff report and comments made at the public hearing incorporated herein, does hereby grant approval of a Conditional Use Permit pursuant to Title 19 of the Belvedere Municipal Code for a gym located at 1550 Tiburon Boulevard, zoned C-1 Commercial, with the following conditions:

- a) The property owner shall defend without limitation and hold the City of Belvedere and its officers harmless in the event of any legal action related to or arising from the granting of this Use Permit approval, shall cooperate with the City in the defense of any such action with counsel selected by the City in its discretion, and shall indemnify the City for any award of damages and/or attorneys' fees and associated costs that may result.
- b) The hours of operation are subject to the hours limited to those listed on the Application, dated October 25, 2021, as incorporated herein.

- c) The number of designated parking spaces shall not be reduced without further plan review/approval.
- d) The allowed use shall be limited to small scale gym, consistent with the existing gym. All other uses including, but not limited to, restaurant/cafe, office, or other uses are prohibited.
- e) Failure to comply with any of the conditions contained herein may be grounds for revocation of the Use Permit.

PASSED AND ADOPTED at a regular meeting of the Belvedere Planning Commission on November 16, 2021, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

RECUSED:

APPROVED: _____
Peter Mark, Planning Commission Chair

ATTEST: _____
Beth Haener, City Clerk



APPLICATION FOR GENERAL USE PERMIT

CITY OF BELVEDERE • PLANNING COMMISSION
450 SAN RAFAEL AVE • BELVEDERE, CA 94920-2336
PH. 415-435-3838 • FAX 415-435-0430 • WWW.CITYOFBELVEDERE.ORG

FOR STAFF USE ONLY

Date: _____ Rec'd. by: _____ Amount: _____ Receipt No.: _____
Assessors Parcel No: _____ Zone: _____

SECTION 1 • PROJECT SUMMARY

Address of Property: 1550 Tiburon Blvd, Tiburon CA 94920, Unit P

Record Owner of Property: Belvedere Land Company

Mailing 83 Beach Rd Daytime Phone: (415) 435-4525

Address: Belvedere, CA 94920 Fax: _____

Email: _____

Owner's Representative: Roberto Santo Domingo

Mailing 83 Beach Rd Daytime Phone: (415) 435-4525

Address: Belvedere, CA 94920 Fax: _____

Email: rob@belvederelandcompany.com

1. a. Existing use of site: Book store
b. Proposed use of site: Exercise studio extension
2. Site area in square feet: _____
3. Floor area in square feet: 785
4. Number of employees for:
a. Existing use: n/a b. Proposed use: 2
5. Hours of operation: 0500 - 2100 hours
6. Number of off-street parking spaces for:
a. Existing use: 180 b. Proposed use: 180
7. Surrounding land use: North: retail
South: retail
East: retail
West: retail

8. Any other pertinent information: _____

SECTION 2 • ENVIRONMENTAL INFORMATION REQUIRED BY CEQA

(To Be Completed by Applicant)

Date Filed: 10/7/2021

General Information

- 1. Name and address of developer or project sponsor: Belvedere Land Company
- 2. Address of project: 1550 Tiburon Blvd, Belvedere
Assessor's Block and Lot Number: _____
- 3. Name, address, and telephone number of person to be contacted concerning this project: Roberto Santo Domingo
85 Beach Road, Belvedere, CA 94920, 415 435 0468
- 4. Indicate number of the permit application for the project to which this form pertains: _____
- 5. List and describe any other related permits and other public approvals required for this project, including those required by city, regional, state and federal agencies: _____

- 6. Existing zoning district: C-1
- 7. Proposed use of site (Project for which this form is filed): _____

- 8. Year built: 1956 Original architect: John King

Project Description

- 9. Site size. _____
- 10. Square footage. 785
- 11. Number of floors of construction. 1
- 12. Amount of off-street parking provided. 180
- 13. Attach plans. yes
- 14. Proposed scheduling. November 2021 - January 2021
- 15. Associated projects, such as required grading or staging. none
- 16. Anticipated incremental development. none
- 17. If residential, include the number of units, schedule of unit sizes, range of sale prices or rents, and type of household size expected. n/a
- 18. If commercial, indicate the type, whether neighborhood, city or regionally oriented, square footage of sales area, and loading facilities. n/a
- 19. If industrial, indicate type, estimated employment per shift, and loading facilities. n/a
- 20. If institutional, indicate the major function, estimated employment per shift, estimated occupancy, loading facilities, and community benefits to be derived from the project. n/a
- 21. If the project involves a variance, conditional use or rezoning application, state this and indicate clearly why the application is required. n/a

Are the following items applicable to the project or its effects? Discuss below all items checked yes (attach additional sheets as necessary).

	Yes	No
22. Change in existing features of any bays, tidelands, beaches, or hills, or substantial alteration of ground contours.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
23. Change in scenic views or vistas from existing residential areas or public lands or roads.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
24. Change in pattern, scale or character of general area of project.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
25. Significant amounts of solid waste or litter.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
26. Change in dust, ash, smoke, fumes or odors in vicinity.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
27. Change in ocean, bay, lake, stream or ground water quality or quantity, or alteration of existing drainage patterns.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
28. Substantial change in existing noise or vibration levels in the vicinity.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
29. Site on filled land or on slope of 10 percent or more.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
30. Use of disposal of potentially hazardous materials, such as toxic substances, flammables or explosives.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
31. Substantial change in demand for municipal services (police, fire, water, sewage, etc.).	<input type="checkbox"/>	<input checked="" type="checkbox"/>
32. Substantially increase fossil fuel consumption (electricity, oil, natural gas, etc.).	<input type="checkbox"/>	<input checked="" type="checkbox"/>
33. Relationship to a larger project or series of projects.	<input type="checkbox"/>	<input checked="" type="checkbox"/>

Environmental Setting

34. Describe the project site as it exists before the project, including information on topography, soil stability, plants and animals, and any cultural, historical or scenic aspects. Describe any existing structures on the site, and the use of the structures. Attach photographs of the site. Snapshots or Polaroid photos will be accepted. Flat site used as a retail shopping center.

35. Describe the surrounding properties, including information on plants and animals and any cultural, historical or scenic aspects. Indicate the type of land use (residential, commercial, etc.), intensity of land use (one-family, apartment houses, shops, department stores, etc.), and scale of development (height, frontage, setback, rear yard, etc.). Attach photographs of the vicinity. Snapshots or Polaroid photos will be accepted. Retail and commercial buildings.

SECTION 3 • ACKNOWLEDGEMENT OF HOURLY BILLING COSTS

This Section advises you of the costs that may be involved in processing Planning-related applications and/or appeals. You are hereby requested to acknowledge this information and agree to be responsible for all expenses incurred in the processing of your application(s)/appeal(s).

As the property owner/appellant, you agree to be responsible for the payment of all costs, both direct and indirect, associated with the processing of the applications(s)/appeals(s) referenced below. Such costs may be incurred from the following source:

Hourly billing costs as of October 18, 2013, (subject to change without notice):

City Planner	\$ 69.00
Associate Planner	\$ 54.00
City Attorney	\$195.00
Specialized Planning Consultant	Actual costs + 25% overhead

For all applications and appeals, an initial deposit is required at the time of submittal, with the amounts determined by City Council resolution. In addition to the initial deposit, the property owner/appellant may be required to make further deposits for anticipated work. Invoices are due and payable within 15 days. Application(s) /or appeal(s) will not be placed on an agenda until these deposits are received.

SECTION 4 • USE PERMIT SUBMITTAL REQUIREMENTS

- A. General Procedure. Applications for a Use Permit are acted upon by the Planning Commission at regular meetings which are held on the third Tuesday of every month. To be placed on an agenda, an application must be complete and on file with the Planning Department by the filing date (approximately 45 days prior to the meeting) which is posted several months in advance. Prior to the meeting, all property owners within 300 feet of your property will be sent a public hearing notice stating the nature of your request and the date of the Planning Commission meeting.
- B. Application Requirements. The following submittal requirements are for applications which propose a use not allowed by right in a particular zoning district but are allowed under permit. These uses are listed in Section 19.24.020, 19.28.020, 19.32.020, 19.36.020 and 19.40.020 of Belvedere's Municipal Code. General use permit procedures are provided for in Section 19.80.010 through 19.80.030. All of the following are needed for a complete General Use Permit application:
- 1) Completed application form (front and back)
 - 2) Filing fee.

One full size plan and ten (10) reduced copies (8 ½ x 11 or 14) of site plan showing:

All proposed and remaining structures; all rights-of-way, setbacks and easements; all off-site structures within 100 feet of the property lines with approximate heights and distances; the location of off street parking and loading areas with dimensions, spaces, locations of entrances and exits and the direction of traffic flow into and out of the parking and loading areas shown; the locations and details of existing and proposed landscaped areas, walls, fences, driveways and walks; the location of mechanical equipment on the roof; the gross floor area of all buildings and setback lines and yard requirements.
 - 3) One full size plan and ten (10) copies of elevations showing:

Architectural drawings and/or perspective sketches drawn to scale showing elevations, with materials to be used, of the proposed structure (the location and height of any exterior roof, wall and pad) including any sign to be attached thereto, and showing their relationship to all structures within 100 feet.
 - 4) One full size copy and ten (10) reduced copies of architectural floor plans showing each level with rooms, uses, floor level, doors, windows, etc.
- C. Before the Meeting. A staff report describing your use and recommending that it be approved or denied will be prepared and sent to you and to the Planning Commissioners prior to the meeting. Staff will usually contact you informally if there are any major problems with your application.

- D. At the Meeting. You or your representative must be present at the meeting. The staff report is presented first. The applicant follows and may comment on the plan and staff report. Other members of the public may then speak. The Planning Commission will review the application to see if all provisions of the Zoning Ordinance have been complied with and the required findings can be made. Commission members will then evaluate the proposal and vote on it.
- E. After the Meeting. You or any interested parties may appeal the decision of the Commission to the City Council within 7 days after the meeting.

If no appeals are received within 7 days, a building permit can be issued.

**STATEMENT OF PROPERTY OWNERSHIP,
CERTIFICATION OF APPLICATION, & DESIGNATION OF REPRESENTATIVE**

All property owners must complete this Section.

Street address of subject property: 1550 Tiburon Blvd, Belvedere

Assessor's Parcel No(s). of subject property: 060-082-60, 060-082-57

➤ **Properties Owned by Individuals**

I, _____, state under penalty of perjury under the laws of the State of California that I am the record owner of the above-described subject property.

I hereby make application for approval of the use permit requested. I have read this application and hereby certify that the statements furnished above and in the attached exhibits present the data and information required for the use permit to the best of my ability, and that the facts, statements and information presented are true and correct to the best of my knowledge and belief

I agree to be responsible for all costs incurred in connection with the processing of my application and appeals, if any.

I understand that the contents of this document are a Public Record.

Signed this _____ day of _____, 20____, at Belvedere, California.

Signature _____

➤ **Properties Owned by a Trust, LLC, Corporation, Partnership, or Other Entity**

Please provide proof of ownership and of the signers' authority to enter into contracts regarding this property. One or more (or a combination of) the following documents *may* contain the necessary information.

- **For Trusts:** the **Trust Document** or a **Certificate of Trust**, including any attachments thereto; **Property Deed; Certificate of Title Insurance.**
- **For other entities:** **Articles of Incorporation; Partnership Agreement; Property Deed; Certificate of Title Insurance;** written **certification of facts** by an attorney.

Photocopies are acceptable. To ensure privacy, documentation will be shredded in a timely manner, or, upon request, returned to the applicant.

I/we, _____, state under penalty of perjury under the laws of the State of California that the above-described subject property is owned by a Trust, LLC, Corporation, Partnership, or other entity and that my/our signature(s) on this application are authorized by all necessary action required by said LLC, Corporation, Partnership, or other entity.

I/we hereby make application for approval of the design review requested. I/we have read this application and hereby certify that the statements furnished above and in the attached exhibits present the data and information required for the design review and initial environmental evaluation to the best of my/our ability, and that the facts, statements and information presented are true and correct to the best of my/our knowledge and belief

I/we agree to be responsible for all costs incurred in connection with the processing of my application and appeals, if any. And I/we agree to be bound by Section 5, "Acknowledgement of Responsibilities," above and representations one through four contained therein.

In the case of an application for revocable license, I/we agree that, upon approval by the City Council of the revocable license requested, I/we will promptly execute a license drafted by the City, have it notarized, and return it to the City so that it may be recorded.

I/we understand that the contents of this document are a Public Record. If more than one signature is required by the owner entity to make this application, please have all signers sign below.

Signed this _____ day of _____, 20____, at Belvedere, California.

Signature _____ Signature _____

Title(s) _____ Title(s) _____

Trustee(s) Partners: Limited or General Corporation Other _____

Name of trust, LLC, corporation, or other entity: _____

➤ **Designation of Owner's Representative (Optional)**

I, _____, hereby authorize _____ to file on my behalf any applications, plans, papers, data, or documents necessary to obtain approvals required to complete my project and further authorize said person to appear on my behalf before the Planning Commission and/or City Council. This designation is valid until the project covered by the application(s) is completed and finalized or until the designation is rescinded in writing.

Signature of Owner: _____ Date: _____

Signature of Representative: _____ Date: _____

Tiburon Fitness Club
1550 Tiburon Blvd, Suite O
Belvedere CA 94920

City of Belvedere, Planning Commission
450 San Rafael Ave
Belvedere CA 94920

Application for Conditional Use Permit of Gym Extension

Synopsis

Tiburon Fitness Club is proposing a modest extension to its current space at the Boardwalk Shopping Center by taking over the space previously occupied by Corner Books. The extensions represents an increase of roughly 785 square feet, or ~50% of the current space (1460 square feet).

Tiburon Fitness Club is a boutique gym with a focus on privacy. The club is the only independent gym serving the Belvedere/Tiburon community that is not attached to a larger institution (e.g. Yacht Club, Tennis Club etc.), and as such does not charge an exorbitant initiation fee, nore subjects applicants to long waitlists. The club is located in the courtyard of the Boardwalk Shopping Center, which is the locus of commercial activity in town and the most convenient possible location for a gym.

The current space and proposed extension space are entirely contained within the Boardwalk Shopping Center, with no ability to project sound into any residential neighborhood. The club is focused on providing an environment for individual workouts and one-on-one personal training, and as such has never and does not plan to organize any group exercise classes.

Impact on Neighbors

As mentioned above, the club is focused on creating a private space for individual workouts and personal training, and we have rules in place that forbid the playing of music or consumption of media of any kind without the use of headphones, again limiting any potential for disturbance.

The impact of our proposed extension on parking should be negligible to non-existent. We don't expect the extension to drive any more traffic to the shopping center than any other possible retail use of the space, and certainly not any more than the previous use of the space (a bookstore).

The proposed combined space only has a single wall that adjoins a neighbor (another wall is separated from another neighbor by a large trash room). Furthermore, the extension allows us to move the loudest of our equipment (the treadmills) to more favorable locations (generally away from any neighbor-adjoining wall), where the sound can be better attenuated.

It should be noted that our measures for sound reduction are entirely proactive, as we have never received a complaint from anyone.

Motivations and Benefits

The extension will allow us to moderately increase the number of members we can have in the facility; will allow us to offer a greater range of equipment and gives us more flexibility in general with the layout of the equipment. The proposed extension also increases the windowed surface area, allowing much more natural light into the space.

The extension represents a greater investment by us in the Boardwalk Shopping Center and the retail/commercial scene in Belvedere/Tiburon at large. The shopping center in particular suffers from frequent turnover, especially the spaces in the courtyard. At the time of writing, three major retail spaces in the courtyard area are currently unoccupied. Demands for gyms are high, especially in health-conscious communities, and our ability to grow is proportional to the amount of space available. We believe that we will be an anchor tenant in the courtyard for many years.

Finally, our longer operating hours help discourage the frequent loitering and squatting that occurs after-hours in the courtyard, increasing the overall security of the shopping center and its tenants.

Final Notes

A fitness center is one of the most important services a community can offer its residents, and this extension will allow us to serve a greater part of the community.

We believe our extension plans are well-conceived and represent a net benefit to the community. We kindly ask that the Planning Commission approve our use.

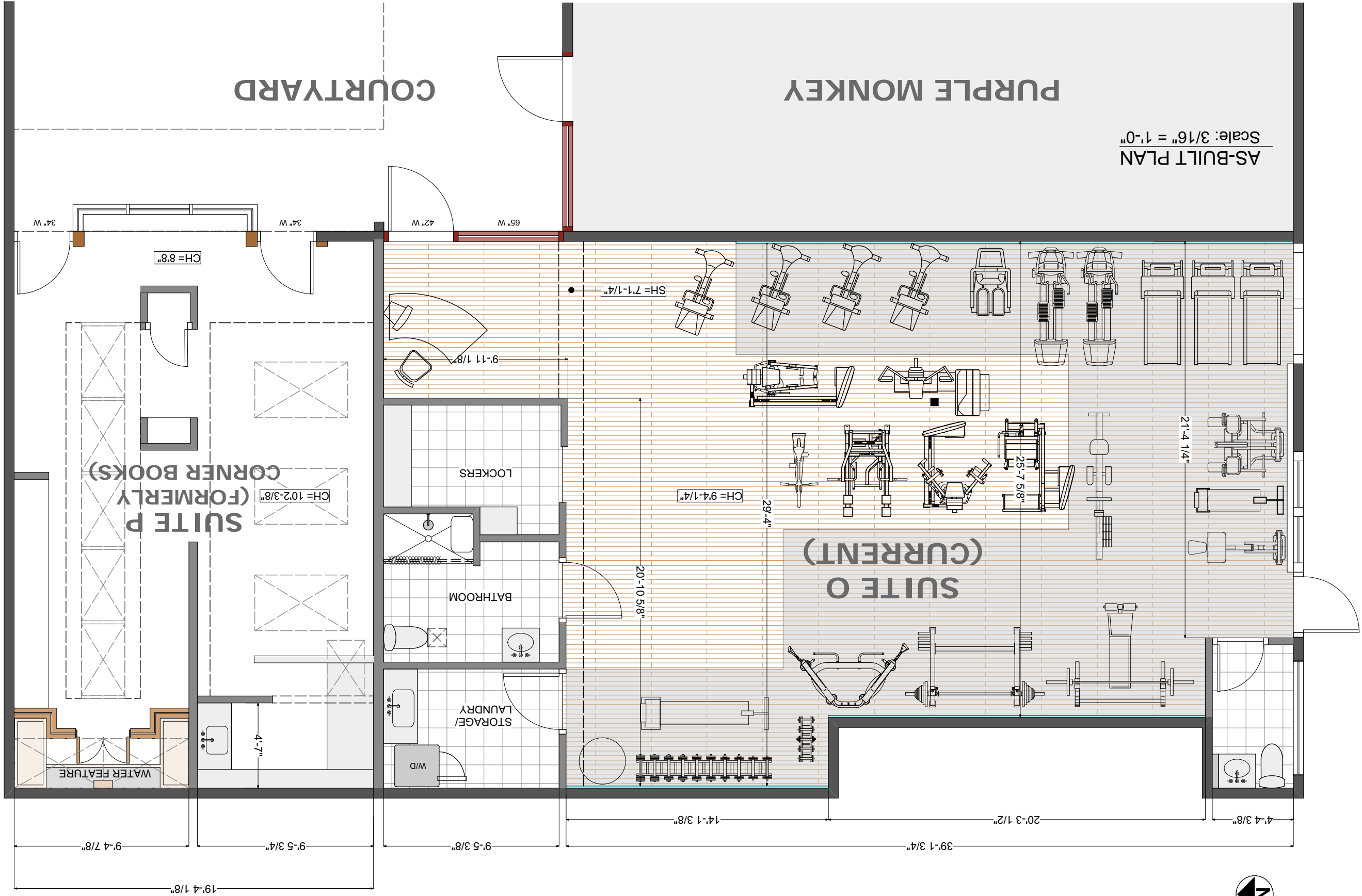
Attached is a preliminary design / floor plan for the proposed extension.

Sincerely,

Tiburon Fitness Club.



AS-BUILT PLAN
Scale: 3/16" = 1'-0"



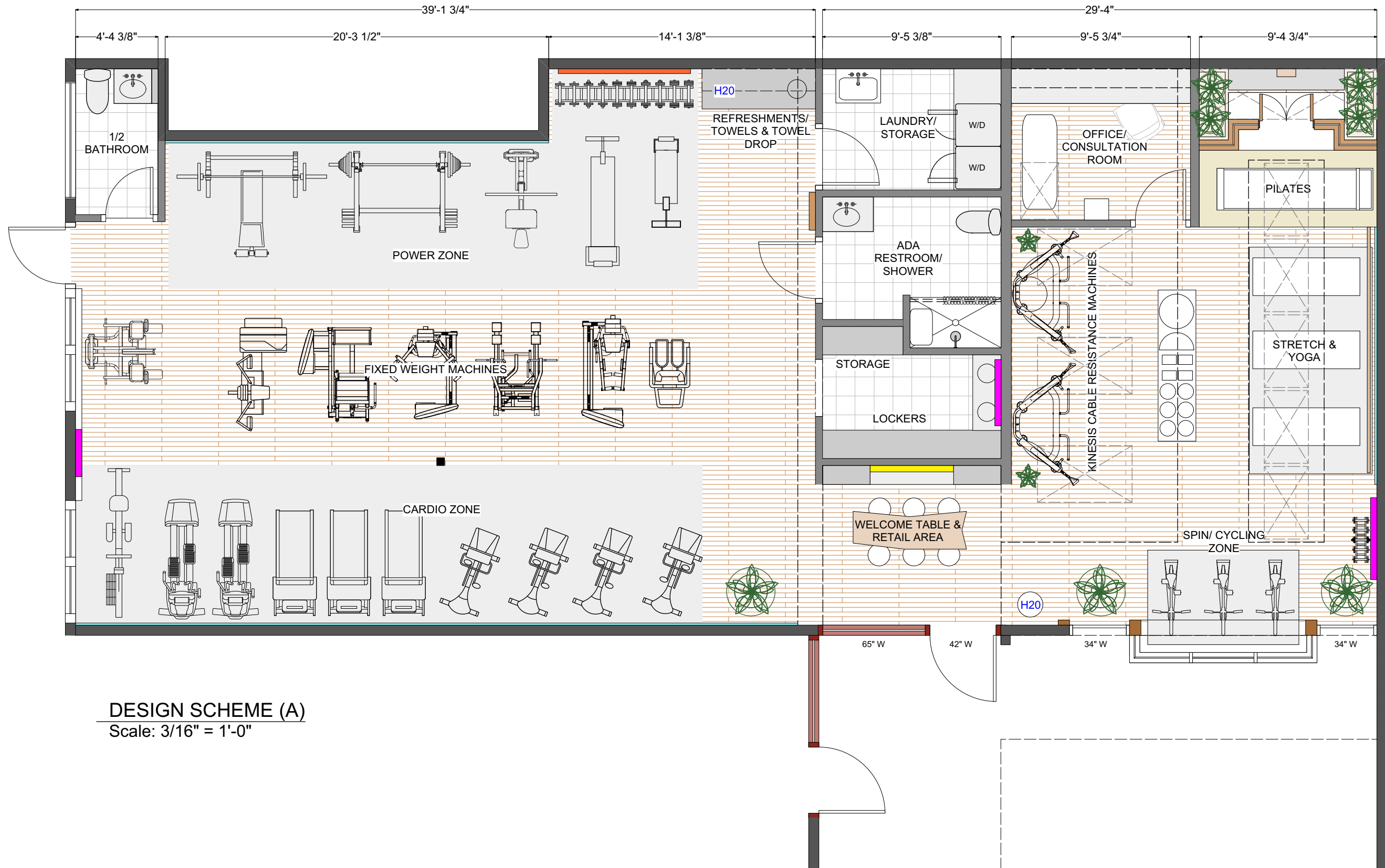
TIBURON FITNESS CLUB
1550 TIBURON BOULEVARD
TIBURON, CALIFORNIA
94920

TITLE
AS-BUILT PLAN
SCALE
3/16" = 1'-0"

DATE
8/06/21
SHEET
1 OF 4



STUDIO CANZ
2245 9TH AVENUE
SAN FRANCISCO, CA 94116
917.756.4260
SONDRA@STUDIOCANZDESIGN



DESIGN SCHEME (A)
Scale: 3/16" = 1'-0"



CITY OF BELVEDERE PLANNING COMMISSION
MEMO

REPORT DATE: 11/2/2021 **AGENDA ITEM NO. 3**
MEETING DATE: 11/16/2021
TO: City of Belvedere Planning Commission
FROM: Rebecca Markwick, Senior Planner
REVIEWED BY: Irene Borba, Director of Planning and Building
Emily Longfellow, City Attorney
SUBJECT: **Design Review for a dock addition at the property located at 44 San Rafael Avenue**

RECOMMENDATION

The proposed project includes Design review for a dock extension at 44 San Rafael Avenue. The application and plans are included as **Attachment 2**.

Staff recommends that the Planning Commission conduct the required public hearing and take the following action:

MOTION 1 Adopt the Resolution granting Design Review for the property located at **44 San Rafael Avenue**, (**Attachment 1**).

BACKGROUND

This agenda item was reviewed and continued at the October Planning Commission hearing.

The staff report, resolution and plans for this project can be found [here](#).

NEW/ADDITIONAL INFORMATION

The homeowner has been working with his neighbors, and has reduced the size of the dock based on the Commissioners and neighbors concerns voiced at the October hearing.

The original dock was proposed at 15'10" by 10'5" and the revised dock is 13'2" by 7'.

Two of the Commissioners were concerned with the size of the dock in this specific location and that a dock in this location would have a significant impact to the neighbors. Another Commissioner was concerned with the impacts to the neighbors and could not support the project based on the fact that the structure as designed was not harmonious with the neighboring properties. One of the Commissioners was in support of the project. The Commissioners could not make the findings to approve the project as designed and requested the property owner to make revisions to the project.

At the time of writing the staff report, staff has not received any comments.

Staff can support the project as redesigned and recommends approval of the dock extension.

ATTACHMENTS

- Attachment 1: Draft Design Review Resolution
- Attachment 2: Minutes, October 19, 2021 Planning Commission Meeting (See Item 1 on meeting Agenda)
- Attachment 3: Correspondence

CITY OF BELVEDERE
RESOLUTION NO. 2021-

**A RESOLUTION OF THE CITY OF BELVEDERE GRANTING DESIGN REVIEW
APPROVAL FOR A DOCK EXPANSION LOCATED AT 44 SAN RAFAEL AVENUE**

WHEREAS, a proper application has been submitted for Design Review pursuant to Title 20 of the Belvedere Municipal Code for a dock expansion at 44 San Rafael Avenue; and

WHEREAS, the project been determined to be categorically exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15301 and Section 15061(b)(3) of the CEQA Guidelines; and

WHEREAS, the Planning Commission held duly a noticed public hearing on October 19, 2021 and November 16, 2021; and

WHEREAS, the Planning Commission finds based upon the findings set forth in Exhibit A attached hereto and incorporated herein, that with the conditions listed below, the proposed project is in substantial conformance with the Design Review criteria specified in Section 20.04.005 and 20.04.110 to 20.04.120 of the Belvedere Municipal Code.

NOW, THEREFORE, BE IT RESOLVED that the Planning Commission of the City of Belvedere does hereby grant approval of the Design Review application pursuant to Title 20 of the Belvedere Municipal Code with the following conditions:

- a) The property owner shall defend and hold the City of Belvedere and its officers harmless in the event of any legal action related to or arising from the granting of this Design Review approval, shall cooperate with the City in the defense of any such action, and shall indemnify the City for any and all awards of damages and/or attorneys' fees and all associated costs that may result; counsel in any such legal action shall be selected by the City in its sole reasonable discretion.
- b) Plans submitted to the Building Department for permit issuance shall be consistent with the approved Planning Commission plans and shall conform to the applications and materials prepared by Richard Laiderman and Jung-wha Song stamped received by the City of Belvedere on November 2, 2021.
- c) Construction shall be limited to the hours of 8:00 a.m. to 5:00 p.m., Monday through Friday, except in special circumstances after obtaining written permission from the City Manager.
- d) All requirements of the City Engineer shall be met.
- e) An **Encroachment Permit** is required from the contractor for temporary and permanent improvements, work activities, and staging or storage of equipment and materials within the public right of way, subject to approval of the Public Works Manager.
- f) Design Review approvals expire twelve (12) months from the date of approval.
- g) All requirements of the Fire Marshal shall be met.
- h) Any new exterior lighting requires Design Review approval.

ATTACHMENT 1

- i) The general contractor shall submit a proposal to the City Manager, for review and approval, addressing the schedule for construction and parking locations for construction vehicles. Prior to the issuance of a building permit, the applicant shall update the Construction Management Plan to the satisfaction of the Building Official.
- j) Plans submitted to the Building Department for permit issuance shall be consistent with the approved Planning Commission plans.
- k) Construction shall be completed within the Construction Time Limit established for this project.
- l) In the event unanticipated archaeological or paleontological resources are uncovered during construction, all work must be halted and an evaluation must be undertaken by a qualified archaeologist or paleontologist to identify the appropriate actions that shall be undertaken.
- m) These Conditions of Approval shall be printed on the Building Permit Construction Plan set of drawings.
- n) These restrictions shall be binding upon any successor in interest of the property.
- o) Prior to the issuance of a building permit the property owner shall demonstrate compliance with State/BAAQMD air quality requirements related to the dust generated by grading and construction.

PASSED AND ADOPTED at a regular meeting of the Belvedere Planning Commission on November 16, 2021, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

RECUSED: Pat Carapiet

APPROVED: _____
Peter Mark, Planning Commission Chair

ATTEST: _____
Beth Haener, City Clerk

Preservation of existing site conditions. To preserve the landscape in its natural state, the removal of trees, vegetation, rock, and soil should be kept to a minimum. Projects should be designed to minimize cut and fill areas, and grade changes should be minimized and kept in harmony with the general appearance of the neighboring landscape.

Landscaping, including the removal of trees, vegetation, rock, and soil, will not occur as the project scope proposes to expand the dock into the lagoon.

Relationship between structures and the site. There should be a balanced and harmonious relationship among the structures on the site, between the structures and the site itself, and between the structures and those on adjoining properties. All new buildings or additions constructed on sloping land should be designed to relate to the natural land-forms and step with the slope in order to minimize the building mass and bulk and to integrate the structure with the site.

The proposed project will create a harmonious relationship among the existing residence and residential structures on the adjoining properties. Specifically, the proposed dock is balanced and harmonious with the structures on the site and the structures on adjoining properties.

Minimizing bulk and mass.

To avoid monotony or an impression of bulk, large expanses of any one material on a single plane should be avoided, and large single plane retaining walls should be avoided. Vertical and horizontal elements should be used to add architectural variety, to break up building planes, and to avoid monotony.

Inapplicable as the project does not propose any exterior improvements which may result in the impression of bulk or large expanses of any one material or a single plane retaining wall. The project will have no impact.

Materials and colors used. Building designs should incorporate materials and colors that minimize the structures visual impacts, that blends with the existing landforms and vegetative cover, that relate to and fit in with structures in the neighborhood, and that do not attract attention to the structures themselves. Soft and muted colors in the earthtone and woodtone ranges are preferred and generally should predominate. Trim and window colors should be compatible with and complementary to the other building colors.

The proposed colors and materials are earthtoned and will blend in with the existing landforms as well as the lagoon waters.

Fences and screening.

A. Fences and physical screening should be located so as to be compatible with the design of the site and structures as a whole, should conceal and screen garbage areas, mechanical equipment, and structural elements from public view, should preserve privacy between adjoining dwellings, where practical, and should not significantly block views.

Not applicable as the project scope will not involve the alteration to the existing fencing of the property.

Privacy. Building placement, and window size and placement should be selected to give consideration to the privacy of adjacent buildings.

The project does not propose any improvements which could potentially impact the privacy of the neighboring residential properties.

Drives, parking and circulation. Walkways, driveways, curb cuts and off-street parking should be planned and designed so as to minimize interference with smooth traffic flow, to encourage separation of pedestrian from vehicular traffic, and to be as safe and convenient as is practical. They should not be out of relationship with the design of the proposed buildings and structures on the site, and should not intrude on the privacy of, or conflict with the appearance or use of neighboring properties.

Inapplicable as the proposed project will not result in the alterations of existing walkways, driveways, curb cuts or off-street parking which would necessitate further review from staff.

Exterior lighting, skylights, and reflectivity. Exterior lighting should not create glare, hazard, or annoyance to neighboring property owners or to passersby. Lighting should be shielded and directed downward, with location of lights coordinated with the approved landscape plan. Skylights should not have white or light opaque exterior lenses.

The project does not propose to add or alter any exterior lighting to the existing residential property. If lighting were to be proposed, the applicant would be required to design the lighting fixtures to face in a downward angle and/or be shielded so as not to create glare, hazard or annoyance to neighboring property owners or the surrounding community.

Consideration of nonconformities. The proposed work shall be viewed in relationship to any nonconformities, as defined in Title 19, and where it is determined to be feasible and reasonable, consideration should be given to conditioning the approval upon the mitigation or elimination of such nonconformities.

The proposed project was reviewed in compliance with Title 19 of the Belvedere Municipal Code and it was determined that the project would not result in any nonconformities.

Landscape plans -- Purpose.

A. Landscape plans should be compatible with the character of the site and surrounding developed properties. Native or natural appearing vegetation, with generally rounded, natural forms, should be placed to appear as loose, informal clusters. B. Landscape plans shall include appropriate planting to soften or screen the appearance of structures as seen from off-site locations and shall include appropriate screening for architectural elements, such as building foundations, deck supports, and retaining walls, that cannot be mitigated through architectural design. C. Landscape plans should provide privacy between properties. Choice of landscape materials should take into consideration the future impact which new planting may have in significantly obstructing views from nearby dwellings.

Resolution 2021-
44 San Rafael Avenue
November 16, 2021
Exhibit A
Page 3

Landscape Plans – Materials. A. Plant materials native to northern California and Marin County, and those that are drought-tolerant are encouraged. Evergreen species are encouraged for use in screen planting situations. Because of high water usage, turf areas should be minimized and narrow turn areas, such as in parking strips, should be avoided. B. Landscape plans should include a mix of fast and slow growing plant materials. Fast growing trees that have a short life span should be used only when planted with others which reach maturity at a later age. C. Landscape plans should include water conserving irrigation systems. Plant materials should be selected so that once established, much of the major site landscaping would survive solely on rainfall. Plant materials native to northern California and Marin County, and those that are drought tolerant, are encouraged. Because of high water usage, turf areas should be minimized and narrow turf areas, such as in parking strips, should be avoided.

Inapplicable as the project scope would not result in any alterations to the existing landscaping.







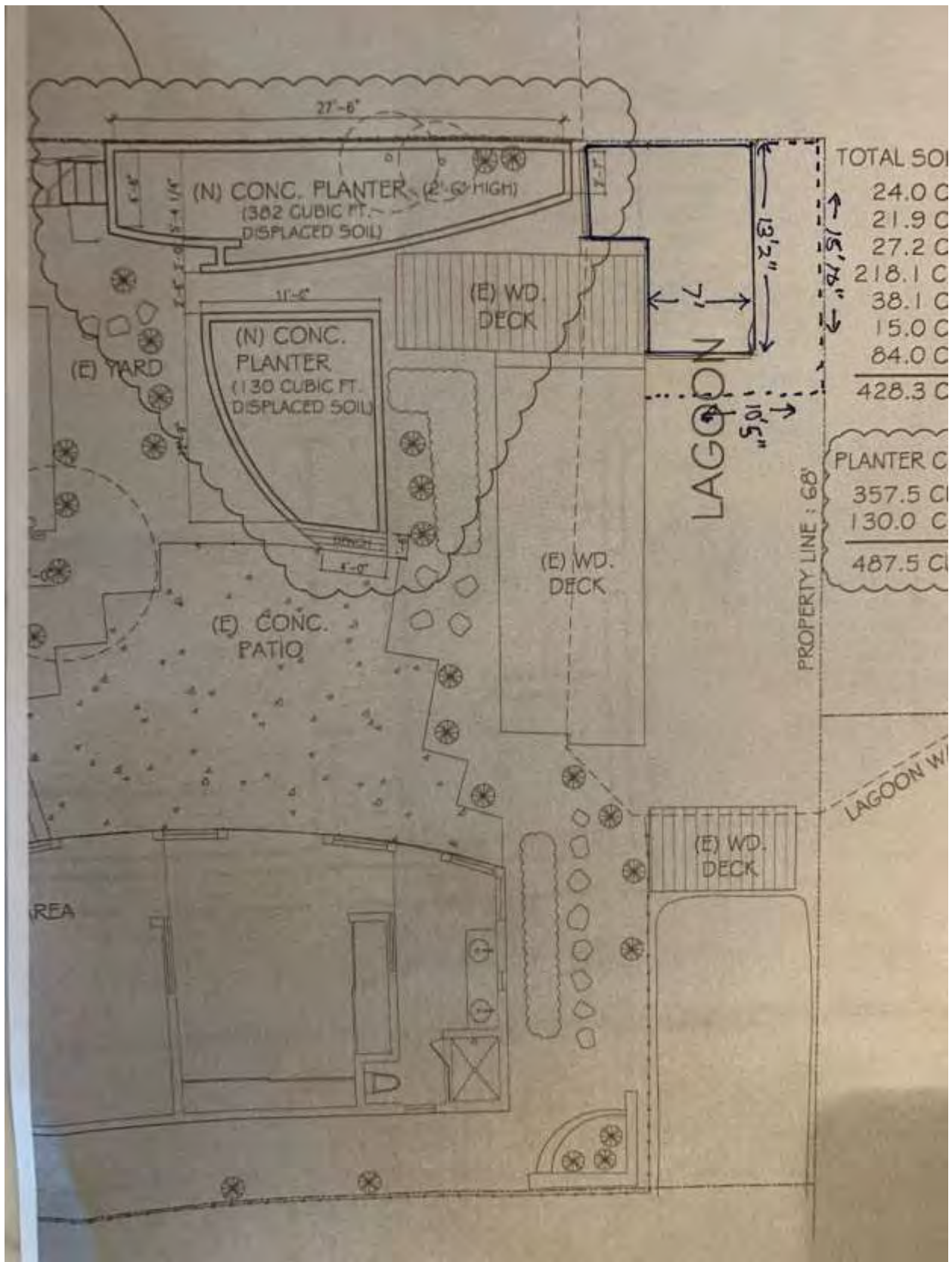
MAD RIVER

ADVENTURE 16

Hobie

MIRAGE eclipse 120

Hobie



> From: Miller, Robert <rmiller@lubinolson.com>
> Sent: Monday, November 8, 2021 10:36 AM
> To: Rebecca Markwick - Senior Planner
> <AssociatePlanner@cityofbelvedere.org>
> Subject: RE: Modified dock proposal
>
> Rebecca: I discussed this matter with my Mom yesterday and she is not comfortable agreeing to Richard's proposal. While his new proposal reduces the size of the dock somewhat, it does not address her fundamental issues and objections.
>
> Accordingly, while we appreciate Richard's efforts to provide an alternative proposal, my Mom continues to object to the dock expansion proposal.
>
> Please advise if we need to resubmit a formal objection to the proposal, including the letter that Riley Hurd previously submitted on behalf of my Mom.
>
> Thank you
>
> [Lubin Olson & Niewiadomski LLP Logo]<<http://www.lubinolson.com/>>
> Robert Miller | LUBIN OLSON Lubin Olson & Niewiadomski LLP | The
> Transamerica Pyramid | 600 Montgomery Street, 14th Floor | San
> Francisco, CA 94111
>



**CITY OF BELVEDERE PLANNING COMMISSION
STAFF REPORT**

REPORT DATE: November 8, 2021 **AGENDA ITEM: 4**

MEETING DATE: November 16, 2021

TO: City of Belvedere Planning Commission

FROM: Irene Borba, Director of Planning and Building

REVIEWED BY: Emily Longfellow, City Attorney

SUBJECT: **Design Review for the property located at 475 Belvedere Avenue for a fence and concrete steps**

RECOMMENDATION

The applicant requests approval of Design Review for a fence and concrete steps which have been installed at the rear of the property and along the property boundary at 475 Belvedere Avenue. The improvements are located adjacent to the city property commonly known as Artist View. The application is included as **Attachment 4** and project plans are included as **Attachment 5**.

The application was submitted as a Design Review Exception (DRE) but staff and the Commission Chair determined that the application should be reviewed/considered by the Planning Commission given the close proximity of the improvements to city property, Artist View, which is zoned Open Space.

Staff has provided the Commission with two draft Resolutions, one for denial and one for approval should the commission be able to approve the project as proposed.

Staff is of the opinion that not all of the findings for design review can be made and that the project should be denied.

Staff recommends that the Planning Commission conduct the required public hearing and take one of the following actions:

MOTION 1 Adopt the Resolution *denying* Design Review for a galvanized metal and wire fence and concrete stepping-stones for the property located at **475 Belvedere Avenue**, (**Attachment 1**)

Or, should the Commission be able to approve said improvements,

Adopt a Resolution of approval for design review for a galvanized metal and wire fence and concrete stepping-stones for the property at **475 Belvedere Avenue** (**Attachment 2**).

PROPERTY SUMMARY

Project Address: 475 Belvedere Avenue
APN: 060-241-29
Project Applicant: Debbie Peterson, Architect
Property Owner: Michael Davis and Janet Johnson
GP Designation: Low Density Residential SFD -1.0 to 3.0 units/net acre
Zoning: R-15 Zoning District, Belvedere Island
Existing Use: Single Family Residential

Site Characteristics – The project site is a steeply sloping property which slopes downward from Belvedere Avenue. The property has a total lot area of 17, 095 SF and is adjacent to other single-family residences and abuts the city property, commonly known as Artist View.

PROPERTY HISTORY

The planning history of the property can be found in **Attachment 3**.

PROJECT DESCRIPTION/ANALYSIS

The applicant requests Planning Commission review and approval of the following entitlement: Design Review for a fence and concrete steps that were installed prior to design review approval.

The fence is 6' in height and is constructed of a galvanized aluminum wire mesh material. The fence is approximately 145 linear feet and installed along the property boundary, adjacent to the city property, commonly known as Artist View (zoned Open Space). Additionally, twenty (20) new large concrete stepping-stones were also installed to provide for a path down to the Bay. A portion of these improvements (approx., 97 linear feet of fence and the 20 stepping-stones) are located within the 100' shoreline band of the Bay Conservation and Development Commission (BCDC). Permits/approvals will be required from BCDC; the project has been conditioned accordingly. Any improvements on city property will be required to be removed.

NOTE TO COMMISSION: Commissioners may notice when conducting their site visits that the adjacent property owner (Klaus Johannsmeier, the property owner of 5 Blanding Lane) on the opposite side of the city property has also installed a fence and concrete steps. Staff has contacted the property owner and is working with the property owner to file the appropriate applications.

Design Review Findings

The Design Review findings, specified in Belvedere Municipal Code Title 20, state that all new structures and additions should be designed to avoid excessively large dwellings that are out of character with their setting or with other dwellings in the neighborhood. All buildings should be designed to relate to, and fit in, with others in the neighborhood and should not attract attention to themselves. To avoid monotony or an impression of bulk, large expanses of any one material on a single plane should be avoided. Vertical and horizontal elements should be used to add architectural variety, to break up building planes, and to avoid monotony. Landscaping should also soften and screen structures and maintain privacy.

Section 20.04.150 of the findings for design review as it relates to fencing states:

20.04.150 (A) Fencing should be compatible with the design of the site, structures, and landscaping as whole, should screen garbage areas, mechanical equipment and accessory

structure from public view, and preserve privacy between adjacent dwellings without significantly blocking views. Temporary deer barriers such as staked wire and chain link are prohibited if installed in the public view, except for purposes of securing site during construction and for protection of new plantings for a period of 90 days or less.

Section 20.04.150 (B) Fences should be designed and located so that they are architecturally compatible with the design of the building, are aesthetically attractive, and do not significantly block views from any public or private property. Wire or chain link fences are discouraged, except as temporary barriers on construction sites or new plantings as allowed in this Section.

In 2018, the city considered and approved proposed amendments to Title 19, Zoning and Title 20, Design Review regarding fence regulations as part of a Deer Fence Task Force Committee. In 2018, the Deer Fencing Task Force Committee was formed to consider suggestions for deer resistant landscaping and to make recommendations for fences that would deter deer from entering properties. The Committee contained two (2) members from both the Council and the Commission, and two (2) members from the community. The Committee also discussed the need to ensure that such fences would be aesthetically appropriate for the community and would not significantly block views or create a “walled in” effect. Additionally, the Committee discussed options for designs and types of fencing, such as non-perimeter fences, angled fences, landscaping used as fencing, or invisible fencing using sonic devices.

The Committee was tasked with reviewing and evaluating:

- ✓ Current fencing regulations contained within the Belvedere Municipal Code, and to consider alternatives.
- ✓ The staff exemption for deer fencing.
- ✓ Design criteria and standards for deer fencing, and to provide direction and suggest a permitting process for deer fencing.

The City Council adopted on October 8, 2018, Ordinance No 2018-7 (**Attachment 6**). The committee also provided information/photos on well designed fences:

<https://www.cityofbelvedere.org/DocumentCenter/View/3723/2-Good-Design?bidId=>

and fencing to avoid:

<https://www.cityofbelvedere.org/DocumentCenter/View/3724/3-What-to-Avoid?bidId=>

In summary, staff is unable to make the required findings for design review as the fence does not appear to be in keeping with the required findings as noted above which relate to fencing. The fence as designed of galvanized metal and wire are not compatible with the design of the site, structures, and landscaping as whole. Additionally, per the required findings, fences should be designed and located so that they are architecturally compatible with the design of the building, are aesthetically attractive, and do not significantly block views from any public or private property. Wire or chain link fences are discouraged. The fence and steps as designed/installed does not appear to be aesthetically attractive and as designed/located the fence impinges on potential views from the city property, Artist View, which is zoned Open Space.

Staff might suggest that an alternative fence and stair design might be more appropriate for this location and or landscaping be provided to help screen and soften the fence. At this time, staff cannot support the proposed project and has provided the commission with a resolution of denial.

However, should the commission be able to approve the project, staff has also provided a resolution of approval with conditions.

ENVIRONMENTAL DETERMINATION

The project has been reviewed under the provisions of the California Environmental Quality Act (CEQA) and the CEQA Guidelines, California Code of Regulations. On November 8, 2021, the proposed project was determined to be categorically exempt from CEQA pursuant to Section 15301 Existing Facilities because the proposed project consists of a new fence and concrete stepping-stones. City action is required by January 8, 2022, or the project may be deemed approved.

As explained more fully above, CEQA provides certain exceptions where categorical exemptions may not be used. Under one such exception, a CEQA categorical exemption may not be used if the project has the potential to cause a substantial adverse effect on a CEQA Tribal Cultural Resource. Here a categorical exemption is appropriate because there is no possibility that the project would cause a substantial adverse effect on any potential Tribal Cultural Resources that may, or may not, exist on the site. The subject property is categorized as a Medium Sensitivity site for Tribal Cultural Resources and the proposed construction is located in already disturbed areas of the property.

CORRESPONDENCE

A copy of the public hearing notice for this item was published in *The ARK* newspaper and mailed to all property owners within 300 feet of the subject property. As of the writing of this report, Staff has received only one written letter of support for the improvements from Klaus Johannsmeier, the property owner of 5 Blanding Lane (**Attachment 8**).

CONCLUSION/RECOMMENDATION

As noted above, staff is unable to make the required findings for design review for the proposed improvements. Staff suggests that an alternative design and or landscaping to soften and screen the improvements might be appropriate. Staff has provided the Commission with two separate resolutions for consideration; one denying the project and one approving the project.

Staff recommends that the Planning Commission conduct the required public hearing and take the following actions:

MOTION 1 Adopt the Resolution *denying* Design Review for the property located at **475 Belvedere Avenue**, (**Attachment 1**) however should the Commission be in a position to approve said improvements, a Resolution of approval has also been provided for consideration (**Attachment 2**).

ATTACHMENTS

Attachment 1: Draft Resolution for Design Review, Resolution of Denial
Attachment 2: Draft Resolution for Design Review, Resolution for Approval
Attachment 3: Property History
Attachment 4: Project Applications
Attachment 5: Project Plans
Attachment 6: City Council Ordinance No 2018.7 adopted on October 8, 2018.
Attachment 7: Photos of improvements
Attachment 8: Correspondence

CITY OF BELVEDERE

RESOLUTION NO. 2021 -

A RESOLUTION OF THE CITY OF BELVEDERE DENYING DESIGN REVIEW APPROVAL FOR A FENCE AND CONCRETE STEPPING STONES FOR THE PROPERTY LOCATED AT 475 BELVEDERE AVENUE

WHEREAS, a proper application has been submitted for Design Review pursuant to Title 20 of the Belvedere Municipal Code for the installation of a fence and concrete stepping stones without prior planning approval for the subject property located at 475 Belvedere Avenue; and

WHEREAS, the project been determined to be categorically exempt from the California Environmental Quality Act (CEQA) pursuant to pursuant to *Section 15301 Class 1 Existing Facilities* because the proposed project includes the construction of fence and concrete stepping stones and there is no negligible or no expansion of use beyond that existing; and

WHEREAS, project is exempted from CEQA by the Common Sense Exemption CEQA Guideline section 15061(b)(3), because it can be seen with certainty that the project will not have a significant effect on the environment; the property is fully developed with an existing residence and other site improvements and the proposed modification would be constructed in a developed area of the property, where the soil and grounds are already disturbed. The project site is categorized as a site of Medium Sensitivity for Tribal Cultural Resources; and

WHEREAS, the Planning Commission held a properly noticed hearing on November 16, 2021; and

WHEREAS, the Planning Commission finds based upon the findings set forth in **Exhibit A** attached hereto and incorporated herein, that the proposed project is *not* in substantial conformance with the Design Review criteria specified in Section 20.04.110 to 20.04.120 of the Belvedere Municipal Code as the improvements as designed/installed do not appear to be aesthetically attractive and wire fences are discouraged and as designed/located the fence impinges on potential views from the city property, Artist View, which is zoned Open Space.

NOW, THEREFORE BE IT RESOLVED that the Planning Commission of the City of Belvedere does hereby *deny* approval of the Design Review application pursuant to Title 20 of the Belvedere Municipal Code the site improvements (fence and concrete stepping stones):

- a) The property owner shall defend and hold the City of Belvedere and its officers harmless in the event of any legal action related to or arising from the granting of this Design Review approval and/or associated project, shall cooperate with the City in the defense of any such action with counsel selected by the City in its discretion, and shall indemnify the City for any and all awards of damages and/or attorneys' fees and all associated costs that may result.
- b) The existing improvements (fence and concrete stepping stones) installed without prior approval shall be removed within 90 days from said hearing date.

Resolution 2021-
475 Belvedere Avenue
November 16, 2021
Page 2

PASSED AND ADOPTED at a regular meeting of the Belvedere Planning Commission on November 16, 2021, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

RECUSED:

APPROVED: _____
Peter Mark, Planning Commission Chair

ATTEST: _____
Beth Hener, City Clerk

Exhibit "A"

DESIGN REVIEW FINDINGS

The following sections are edited versions of Sections 20.04.110 to 20.04.120 of the Belvedere Municipal Code and the Design Review Criteria. In order for a design review application to be approved, the Planning Commission must find the project to be in substantial conformance with these criteria.

Preservation of existing site conditions. To preserve the landscape in its natural state, the removal of trees, vegetation, rock, and soil should be kept to a minimum. Projects should be designed to minimize cut and fill areas, and grade changes should be minimized and kept in harmony with the general appearance of the neighboring landscape.

The majority of the existing landscaping will be preserved and is in keeping and harmony with the appearance of the neighborhood. There is minimal cut and fill with the proposed project as the proposal includes the installation of a fence and concrete stepping stones that follow the slope of the property.

Relationship between structures and the site. There should be a balance and harmonious relationship among the structures on the site, between the structures and the site itself, and between the structures and those on adjoining properties. All new buildings or additions constructed on sloping land should be designed to relate to the natural land-forms and step with the slope in order to minimize the building mass and bulk and to integrate the structure with the site.

The proposed modifications are *not* in keeping with the existing style, architecture and form of the residence and *does not* create and *is not* balanced and harmonious with the existing structures on the site and with adjoining properties. The fence as designed of galvanized metal and wire are not compatible with the design of the site, structures, and landscaping as whole and wire or chain link fences are discouraged. Fences should be designed and located so that they are architecturally compatible with the design of the building, are aesthetically attractive, and do not significantly block views from any public or private property; the fence as designed/located impinges on potential views from the city property.

Minimizing bulk and mass.

A. All new structures and additions should be designed to avoid monumental or excessively large dwellings that are out of character with their setting or with other dwellings in the neighborhood. All buildings should be designed to relate to and fit in with others in the neighborhood and not designed to draw attention to themselves.

The site improvements (wire and metal fence and large concrete stepping stones) are designed in such a way that the improvements *do not* fit well on the site and *are not* compatible with the existing residence/architecture. The proposed improvements *does not* fit in with others in the neighborhood and as designed draws attention to itself.

B. To avoid monotony or an impression of bulk, large expanses of any one material on a single plane should be avoided, and large single plane retaining walls should be avoided. Vertical and horizontal elements should be used to add architectural variety, to break up building planes, and to avoid monotony.

The project *does not* avoid monotony and the impression of bulk. The fence is comprised of galvanized metal and wire and the stepping stones are oversized and made of concrete that as design *does not* add architectural variety and *does not* blend in nicely with the property.

Materials and colors used. Building designs should incorporate materials and colors that minimize the structures visual impacts, that blends with the existing landforms and vegetative cover, that relate to and fit in with structures in the neighborhood, and that do not attract attention to the structures themselves. Soft and muted colors in the earthtone and woodtone ranges are preferred and generally should predominate. Trim and window colors should be compatible with and complementary to the other building colors.

The proposal for a galvanized metal and wire fence and large concrete stepping stones *does not* blend in with the existing landforms or relate well to the site and the existing structures.

Fences and screening.

A. Fences and physical screening should be located so as to be compatible with the design of the site and structures as a whole, should conceal and screen garbage areas, mechanical equipment, and structural elements from public view, should preserve privacy between adjoining dwellings, where practical, and should not significantly block views.

The fence as designed of galvanized metal and wire are not compatible with the design of the site, structures, and landscaping as whole. Additionally, fences should be designed and located so that they are architecturally compatible with the design of the building, are aesthetically attractive, and do not significantly block views from any public or private property. Wire or chain link fences are discouraged. The fence and steps as designed/installed does not appear to be aesthetically attractive and as designed/located the fence impinges on potential views from the city property, Artist View, which is zoned Open Space.

Privacy. Building placement, and window size and placement should be selected to give consideration to the privacy of adjacent buildings.

Not applicable.

Drives, parking and circulation. Walkways, driveways, curb cuts and off-street parking should be planned and designed so as to minimize interference with smooth traffic flow, to encourage separation of pedestrian from vehicular traffic, and to be as safe and convenient as is practical. They should not be out of relationship with the design of the proposed buildings and structures on the site, and should not intrude on the privacy of, or conflict with the appearance or use of neighboring properties.

Not applicable as these are not being modified.

Exterior lighting, skylights, and reflectivity. Exterior lighting should not create glare, hazard, or annoyance to neighboring property owners or to passersby. Lighting should be shielded and directed downward, with location of lights coordinated with the approved landscape plan. Skylights should not have white or light opaque exterior lenses.

Not applicable as no new lighting is proposed at this time.

Consideration of nonconformities. The proposed work shall be viewed in relationship to any nonconformities, as defined in Title 19, and where it is determined to be feasible and reasonable, consideration should be given to conditioning the approval upon the mitigation or elimination of such nonconformities.

Not applicable.

Landscape plans -- Purpose.

A. Landscape plans should be compatible with the character of the site and surrounding developed properties. Native or natural appearing vegetation, with generally rounded, natural forms, should be placed to appear as loose, informal clusters. B. Landscape plans shall include appropriate planting to soften or screen the appearance of structures as seen from off-site locations and shall include appropriate screening for architectural elements, such as building foundations, deck supports, and retaining walls, that cannot be mitigated through architectural design. C. Landscape plans should provide privacy between properties. Choice of landscape materials should take into consideration the future impact which new planting may have in significantly obstructing views from nearby dwellings.

Landscape Plans – Materials. A. Plant materials native to northern California and Marin County, and those that are drought-tolerant are encouraged. Evergreen species are encouraged for use in screen planting situations. Because of high water usage, turf areas should be minimized and narrow turn areas, such as in parking strips, should be avoided. B. Landscape plans should include a mix of fast and slow growing plant materials. Fast growing trees that have a short life span should be used only when planted with others which reach maturity at a later age. C. Landscape plans should include water conserving irrigation systems. Plant materials should be selected so that once established, much of the major site landscaping would survive solely on rainfall. Plant materials native to northern California and Marin County, and those that are drought tolerant, are encouraged. Because of high water usage, turf areas should be minimized and narrow turf areas, such as in parking strips, should be avoided.

Not applicable as no new landscaping is proposed.

CITY OF BELVEDERE

RESOLUTION NO. 2021-

A RESOLUTION OF THE CITY OF BELVEDERE GRANTING DESIGN REVIEW APPROVAL FOR A FENCE AND CONCRETE STEPPING STONES FOR THE PROPERTY LOCATED AT 475 BELVEDERE AVENUE

WHEREAS, a proper application has been submitted for Design Review pursuant to Title 20 of the Belvedere Municipal Code a fence and concrete stepping stones for the subject property located at 475 Belvedere Avenue; and

WHEREAS, the project been determined to be categorically exempt from the California Environmental Quality Act (CEQA) pursuant to pursuant to *Section 15301 Class 1 Existing Facilities* because the proposed project includes the construction of a fence and concrete stepping stones involving negligible or no expansion of use beyond that existing; and

WHEREAS, project is exempted from CEQA by the Common Sense Exemption CEQA Guideline section 15061(b)(3), because it can be seen with certainty that the project will not have a significant effect on the environment; the property is fully developed with an existing residence and other site improvements and the proposed modification would be constructed in a developed area of the property, where the soil and grounds are already disturbed. The project site is categorized as a site of Medium Sensitivity for Tribal Cultural Resources; and

WHEREAS, the Planning Commission held a properly noticed hearing on November 16, 2021; and

WHEREAS, the Planning Commission finds based upon the findings set forth in **Exhibit A** attached hereto and incorporated herein, that with the conditions listed below, the proposed project is in substantial conformance with the Design Review criteria specified in Section 20.04.110 to 20.04.120 of the Belvedere Municipal Code.

NOW, THEREFORE BE IT RESOLVED that the Planning Commission of the City of Belvedere does hereby grant approval of the Design Review application pursuant to Title 20 of the Belvedere Municipal Code a fence and concrete stepping stones with the following conditions:

- a) The property owner shall defend and hold the City of Belvedere and its officers harmless in the event of any legal action related to or arising from the granting of this Design Review approval and/or associated project, shall cooperate with the City in the defense of any such action with counsel selected by the City in its discretion, and shall indemnify the City for any and all awards of damages and/or attorneys' fees and all associated costs that may result.
- b) Within 90 days from the hearing date, a landscaping plan shall be submitted to the planning department for review/approval by the planning staff and the Planning Commission Chair to provide for screening and softening of the existing site improvements (fence and concrete stepping stones). Following approval of said landscaping shall be installed within 90days of approval from the planning staff and commission chair.
- c) The property owner or applicant shall obtain proper permits/approval from the Bay Conservation and Development Commission (BCDC).

- d) Construction shall be limited to the hours of 8:00 a.m. to 5:00 p.m., Monday through Friday, except in special circumstances after obtaining written permission from the City Manager.
- e) Design Review approvals expire twelve (12) months from the date of approval, unless a Building Permit has been issued or an extension has been granted.
- f) Construction shall be completed within the Construction Time Limit established for this project.
- g) In the event unanticipated archaeological or paleontological resources are uncovered during construction, all work must be halted and an evaluation must be undertaken by a qualified archaeologist or paleontologist to identify the appropriate actions that shall be undertaken.
- h) These restrictions shall be binding upon any successor in interest of the property.

PASSED AND ADOPTED at a regular meeting of the Belvedere Planning Commission on November 16, 2021, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

RECUSED:

APPROVED: _____
Peter Mark, Planning Commission Chair

ATTEST: _____
Beth Haener, City Clerk

Exhibit "A"

DESIGN REVIEW FINDINGS

The following sections are edited versions of Sections 20.04.110 to 20.04.120 of the Belvedere Municipal Code and the Design Review Criteria. In order for a design review application to be approved, the Planning Commission must find the project to be in substantial conformance with these criteria.

Preservation of existing site conditions. To preserve the landscape in its natural state, the removal of trees, vegetation, rock, and soil should be kept to a minimum. Projects should be designed to minimize cut and fill areas, and grade changes should be minimized and kept in harmony with the general appearance of the neighboring landscape.

The existing landscaping will be preserved. There is minimal cut and fill with the proposed project; the project is for a galvanized metal and wire fence and concrete stepping stones at the rear of the property.

Relationship between structures and the site. There should be a balance and harmonious relationship among the structures on the site, between the structures and the site itself, and between the structures and those on adjoining properties. All new buildings or additions constructed on sloping land should be designed to relate to the natural land-forms and step with the slope in order to minimize the building mass and bulk and to integrate the structure with the site.

The proposed site improvements for a fence and concrete stepping stones are in keeping with the existing style, architecture and form of the residence and is balanced and harmonious with the existing structures on the site and with adjoining properties. The design and colors and materials of the fence and stepping stones integrates into the site.

Minimizing bulk and mass.

A. All new structures and additions should be designed to avoid monumental or excessively large dwellings that are out of character with their setting or with other dwellings in the neighborhood. All buildings should be designed to relate to and fit in with others in the neighborhood and not designed to draw attention to themselves.

The fence and concrete stepping stones, as designed and as conditioned will fit well on the site and will be compatible with the existing residence on the property and the neighborhood. The proposed modifications would not be massive or out of scale with the site or surroundings. The proposed improvements fit in with others in the neighborhood and are not designed to draw attention to it.

B. To avoid monotony or an impression of bulk, large expanses of any one material on a single plane should be avoided, and large single plane retaining walls should be avoided. Vertical and horizontal elements should be used to add architectural variety, to break up building planes, and to avoid monotony.

The project avoids monotony and the impression of bulk. The project as conditioned, will blend nicely with the landscaping and other properties in the neighborhood.

Materials and colors used. Building designs should incorporate materials and colors that minimize the structures visual impacts, that blends with the existing landforms and vegetative cover, that relate to and fit in with structures in the neighborhood, and that do not attract attention to the structures themselves. Soft and muted colors in the earthtone and woodtone ranges are preferred and generally should predominate. Trim and window colors should be compatible with and complementary to the other building colors.

As conditioned, the colors and materials for the fence and concrete steps will blend in with the existing residence and the site minimizing visual impacts and would not attract attention to the structures themselves.

Fences and screening.

A. Fences and physical screening should be located so as to be compatible with the design of the site and structures as a whole, should conceal and screen garbage areas, mechanical equipment, and structural elements from public view, should preserve privacy between adjoining dwellings, where practical, and should not significantly block views.

The fence as designed of galvanized metal and wire are compatible with the design of the site, structures, and landscaping as whole. The fence is designed and located so that they are architecturally compatible with the design of the building, are aesthetically attractive, and it does not significantly block views from any public or private property. Wire or chain link fences are typically discouraged however with some landscaping the improvements can blend in with the site and surroundings. The fence and steps as designed/installed does appear to be aesthetically attractive and as designed/located the fence does not impinge on potential views from the city property, Artist View, which is zoned Open Space.

Privacy. Building placement, and window size and placement should be selected to give consideration to the privacy of adjacent buildings.

Not applicable.

Drives, parking and circulation. Walkways, driveways, curb cuts and off-street parking should be planned and designed so as to minimize interference with smooth traffic flow, to encourage separation of pedestrian from vehicular traffic, and to be as safe and convenient as is practical. They should not be out of relationship with the design of the proposed buildings and structures on the site, and should not intrude on the privacy of, or conflict with the appearance or use of neighboring properties.

Not applicable as these are not being modified.

Exterior lighting, skylights, and reflectivity. Exterior lighting should not create glare, hazard, or annoyance to neighboring property owners or to passersby. Lighting should be shielded and directed downward, with location of lights coordinated with the approved landscape plan. Skylights should not have white or light opaque exterior lenses.

Not applicable as no new lighting is proposed.

Consideration of nonconformities. The proposed work shall be viewed in relationship to any nonconformities, as defined in Title 19, and where it is determined to be feasible and reasonable, consideration should be given to conditioning the approval upon the mitigation or elimination of such nonconformities.

Not applicable as the proposal is for a fence and concrete stepping stones.

Landscape plans -- Purpose.

A. Landscape plans should be compatible with the character of the site and surrounding developed properties. Native or natural appearing vegetation, with generally rounded, natural forms, should be placed to appear as loose, informal clusters. B. Landscape plans shall include appropriate planting to soften or screen the appearance of structures as seen from off-site locations and shall include appropriate screening for architectural elements, such as building foundations, deck supports, and retaining walls, that cannot be mitigated through architectural design. C. Landscape plans should provide privacy between properties. Choice of landscape materials should take into consideration the future impact which new planting may have in significantly obstructing views from nearby dwellings.

Landscape Plans – Materials. A. Plant materials native to northern California and Marin County, and those that are drought-tolerant are encouraged. Evergreen species are encouraged for use in screen planting situations. Because of high water usage, turf areas should be minimized and narrow turn areas, such as in parking strips, should be avoided. B. Landscape plans should include a mix of fast and slow growing plant materials. Fast growing trees that have a short life span should be used only when planted with others which reach maturity at a later age. C. Landscape plans should include water conserving irrigation systems. Plant materials should be selected so that once established, much of the major site landscaping would survive solely on rainfall. Plant materials native to northern California and Marin County, and those that are drought tolerant, are encouraged. Because of high water usage, turf areas should be minimized and narrow turf areas, such as in parking strips, should be avoided.

No landscaping has been proposed as part of this project but staff has conditioned that a landscaping plan be provided to screen and soften the improvements.

475 Belvedere Avenue – Property History

1976 – Planning Commission Design Review & Variances (height & front yard setback) to construct a garage, car deck & a single-family residence. An extension of the design review approval was later granted for the project.

1976 – City Council approval for a revocable license for a driveway approach with construction of a stairway abutting the roadway retaining wall.

1979 – Planning Commission consideration and approval for the removal of an existing eucalyptus tree.

1995 – City Council approved a Revocable License for existing private improvements within the City's right-of-way including stone and wood retaining walls, concrete stairs, parking deck and driveway, and wood railings & gate. The staff report noted that the city had received a building permit request to renovate the existing residence at 475 Belvedere and staff conditioned that a revocable license be obtained for existing improvements in the city right-of-way.

1996 – Planning Commission design review to convert and extend existing basement crawl space below the garage and parking deck to create a guest room, remodel the existing bathroom/sauna area and add a small pavilion and patio top the existing parking deck. An Exception to Floor Area was also requested. Portions of the application were approved, and specific elements were continued to another meeting and approved in August 1996 via resolution No. 9-40.

1996 – Staff approval for installation of a new man door and windows at garage.

1996 – Staff approval for a two-foot high retaining wall and hot tub on the west side of the house.

1997- Planning Commission design review (retroactive) for exterior improvements including fencing, gates and planter boxes. The proposal was *denied* (Planning Commission Resolution No. 97-26).

The denial of the application was appealed to the City Council and heard by Council in July 1997. The appeal was denied by the City Council and the decision of the Planning Commission was upheld (City Council Resolution No. 97-26).

2001 Staff Approval – to replace an asphalt shingle roof with slate and replace gutters with copper.

2003- Staff Approval – to replace an existing hedge along the street.

2003 – Staff Approval to replace two existing balconies with a single wood balcony with painted metal guardrail at the rear of the residence.

2003 – Planning Commission for a deck (three-levels) at the rear of the property. An Exception to Floor Area was also requested. Approved via Resolution No. 2003-52 & 2003-53.

2004 – Staff Approval for revisions to the deck.

2009 Approval of a Design Review Exception for new deer fencing & new gates.

2013 – Exemption from Design Review to replace existing windows and doors in existing locations.

2013 – Exemption from Design Review to replace wood handrails iron handrails.

2014 - Exemption from Design Review to replace existing windows and doors in existing locations.

2014 – Exemption from Design Review to correct dry rot on deck.

2014 – Exemption from Design Review for removal of 4 trees.

2016 – Exemption for Design Review to plant a hedge.

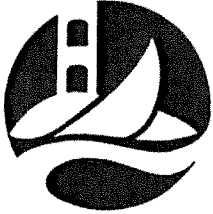
2018 – Approval for an extension of design review approval for fencing, planter and trash enclosure area and exterior lighting.

2019 – Exemption from Design Review for revisions to trash enclosure area.

2019 – Exemption from Design Review for AC unit.

2020- Design Review Exception for the planting of an oak tree and a pittosporum hedge.

2020- Exemption from Design Review for installation of a generator.



APPLICATION FOR DESIGN REVIEW

CITY OF BELVEDERE • PLANNING DEPARTMENT
450 SAN RAFAEL AVE • BELVEDERE, CA 94920-2336
PH. 415-435-3838 • FAX 415-435-0430 • WWW.CITYOFBELVEDERE.ORG

FOR STAFF USE ONLY

Date: _____ Rec'd. by: _____ Planning Comm. Approval
Design Review Exception
Amount: _____ Receipt No.: _____ Staff Approval
Parcel No.: _____ Zone: _____
Located in Flood Zone AE VE N/A

SECTION 1 • PROJECT SUMMARY

Does this project have an active building permit? No Yes Permit No.: _____

Is this property adjacent to a City Owned Lane? No Yes

Is there an Existing Revocable License for this property? No Yes Lic # 95-24

Does this project have Planning Commission approval? No Yes

Address of Property: 475 Belvedere Avenue

Record Owner of Property: Michael Davis and Janet Johnstone

Mailing 475 Belvedere Avenue Daytime Phone: 415 408 8658

Address: Belvedere, CA 94920 Fax: _____

_____ Email: michael@arlendavis.org

Owner's Representative: Debbi Peterson

Mailing 44 Greenfield Avenue Daytime Phone: 415 559 0548

Address: San Anselmo, CA 94960 Fax: _____

_____ Email: debbipetersonarchitect@comcast.net

Project Description: new 6 foot high galvanized aluminum wire mesh fence along westerly
property line and 20 concrete stepping stones for shoreline access

ZONING PARAMETERS:

	<u>Required</u>	<u>Existing</u>	<u>Proposed</u>
Lot Area	_____	_____	unchanged
Lot Coverage	_____	_____	unchanged
Total Floor Area	_____	_____	unchanged
Front Yard Setback	_____	_____	unchanged
Left Sideyard Setback	_____	_____	unchanged
Right Sideyard Setback	_____	_____	unchanged
Rear Yard Setback	_____	_____	unchanged
Building Height Maximum	_____	_____	unchanged
Building Height Average	_____	_____	unchanged
Parking Spaces	_____	_____	unchanged

SECTION 2 • ENVIRONMENTAL INFORMATION REQUIRED BY CEQA

(To Be Completed by Applicant)

Date Filed: 7/9/2021

General Information

1. Name and address of developer or project sponsor: Michael Davis and Janet Johnstone
2. Address of project: 475 Belvedere Avenue
3. Name, address, and telephone number of person to be contacted concerning this project: Debbi Peterson, 44 Greenfield Ave., San Anselmo, CA 94960
4. Indicate number of the permit application for the project to which this form pertains: _____
5. List and describe any other related permits and other public approvals required for this project, including those required by city, regional, state and federal agencies: BCDC as project is within the 100' shoreline band
6. Existing zoning district: R:15
7. Proposed use of site (Project for which this form is filed): residential
8. Year built: n/a Original architect: n/a

Project Description

9. Site size. 24,042 sf
10. Square footage. n/a
11. Number of floors of construction. n/a
12. Amount of off-street parking provided. n/a
13. Plans attached? Yes
14. Proposed scheduling. Fall 2021

15. Associated projects, such as required grading or staging. none
-
16. Anticipated incremental development. none
-
17. If residential, include the number of units, schedule of unit sizes, range of sale prices or rents, and type of household size expected. not applicable
-
18. If commercial, indicate the type, whether neighborhood, city or regionally oriented, square footage of sales area, and loading facilities. not applicable
-
19. If the project involves a variance, conditional use or rezoning application, state this and indicate clearly why the application is required. not applicable
-

Are the following items applicable to the project or its effects? Discuss below all items checked yes (attach additional sheets as necessary).

- | | Yes | No |
|--------------------------------------------------------------------------------------------------------------------------|-------------------------------------|-------------------------------------|
| 20. Change in existing features of any bays, tidelands, beaches, or hills, or substantial alteration of ground contours. | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| 21. Change in scenic views or vistas from existing residential areas or public lands or roads. | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| 22. Change in pattern, scale or character of general area of project. | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| 23. Significant amounts of solid waste or litter. | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| 24. Change in dust, ash, smoke, fumes or odors in vicinity. | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| 25. Change in ocean, bay, lake, stream or ground water quality or quantity, or alteration of existing drainage patterns. | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| 26. Substantial change in existing noise or vibration levels in the vicinity. | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| 27. Site on filled land or on slope of 10 percent or more. | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| 28. Use of, or disposal of potentially hazardous materials, such as toxic substances, flammables or explosives. | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| 29. Substantial change in demand for municipal services (police, fire, water, sewage, etc.). | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| 30. Substantially increase fossil fuel consumption (electricity, oil, natural gas, etc.). | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| 31. Relationship to a larger project or series of projects. | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| 32. Changes to a structure or landscape with architectural or historical value. | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| 33. Changes to a site with archeological or cultural value such as midden soil. | <input type="checkbox"/> | <input checked="" type="checkbox"/> |

Environmental Setting

34. Describe the project site as it exists before the project, including information on topography, soil stability, plants and animals, and any cultural, historical or scenic aspects. Describe any existing structures on the site, and the use of the structures. Attach photographs of the site. Snapshots or Polaroid photos will be accepted. The project site is a downslope residential lot from Belvedere Avenue to the shoreline at Raccoon Straits. The lot has an average slope of 60%. There is an existing residential home and garage on the property closest to Belvedere Avenue and the property closest to the shoreline is natural undeveloped land.
-
35. Describe the surrounding properties, including information on plants and animals and any cultural, historical or scenic aspects. Indicate the type of land use (residential, commercial, etc.), intensity of land use (one-family, apartment houses, shops, department stores, etc.), and scale of development (height, frontage, setback, rear yard, etc.). Attach photographs of the vicinity. Snapshots or Polaroid photos will be accepted.
- The surrounding properties are all residential with a zoning of R:15. It is a residential neighborhood with single family homes.
-

SECTION 3 • ESTIMATE OF TIME FOR CONSTRUCTION

For Design Review applications not requiring a building permit this section does not apply. Design Review approvals expire twelve (12) months from the date of approval unless granted a longer duration by the Planning Commission.

This Section advises you of the Time Limit Guidelines that are applied to all Design Review applications that require a building permit as prescribed by Section 20.04.035 of the Belvedere Municipal Code.

B. Construction Time Limit Required. This Chapter shall apply to any project for which a design review approval is required, any project requiring a building permit with an estimated construction value of \$50,000 or greater, and/or any landscaping project with an estimated construction value of \$50,000 or greater that is associated with a building permit. As part of any application for design review, the applicant shall file a reasonable estimate of the cost of the proposed project, and based thereon, a construction time limit shall be established for the project in accordance with the guidelines set forth in Subsection C of this Section. The maximum time for completion of project shall not exceed six months for additions and remodeling up to \$100,000 in value; 12 months for construction up to \$500,000 in value; and 18 months for construction valued at more than \$500,000. Failure to complete construction in the agreed upon time will result in fines ranging from \$600 per day to \$1200 per day with a \$300,000 maximum penalty. Application for an extension of the prescribed time limit can be made providing certain conditions are met. The maximum extension is 6 months. The time for completion of the construction shall also be indicated on the building permit.

In the space provided below please indicate the estimated project valuation.

Estimated cost of construction: \$ 13,000.00

Based on the above estimated project valuation, check one of the following Time Limit Guidelines that shall apply to your project:

- 1. For new construction, the demonstrable value of which is estimated to be less than \$500,000.
Construction shall be completed twelve (12) months from the commencement of work following the issuance of the building permit.
- 2. For new construction, the demonstrable value of which is estimated to be more than \$500,000.
Construction shall be completed eighteen (18) months from the commencement of work following the issuance of the building permit.
- 3. For additions, alterations, modifications and repairs, the demonstrable value of which is estimated at less than \$100,000.
Construction shall be completed six (6) months from the commencement of work following the issuance of the building permit.
- 4. For additions, alterations, modifications and repairs, the demonstrable value of which is estimated at less than \$500,000.
Construction shall be completed twelve (12) months from the commencement of work following the issuance of the building permit.
- 5. For additions, alterations, modifications and repairs, the demonstrable value of which is estimated at more than \$500,000.
Construction shall be completed eighteen (18) months from the commencement of work following the issuance of the building permit.

For those projects that do not fall under any of the above Time Limit Guidelines or that wish to exceed the time limit that was approved by the Planning Commission, the following is the “**Extension of Construction Time Limit**” process (BMC Section 20.04.035(D)):

D. Extension of Construction Time Limit.

1. An applicant may request a construction time limit extension at the time of the design review hearing or after the issuance of a building permit. An applicant is limited to one construction time limit extension per project.

2. The Planning Commission has the authority to grant, conditionally grant, or deny a time limit extension request made at the time of a design review hearing based on the reasonable anticipation of one or more of the factors in this Subsection. The Planning Commission’s decision may be appealed in writing to the City Council.

3. The extension committee has the authority to administratively grant, conditionally grant, or deny a time limit extension request made after the issuance of a building permit based on one or more of the factors in this Subsection. The extension committee shall consist of the City Building Official, the Director of Planning and Building, and the Public Works Manager, who shall meet with the project contractor, architect and, at the applicant’s option, a representative or the applicant. The extension committee shall review the extension request within 10 working days of receiving a complete application. Within 10 working days of receiving the decision, the applicant may appeal the extension committee’s decision to the Planning Commission and the Planning Commission’s decision to the City Council. All appeals shall be scheduled within a reasonable time of the receipt of the appeal.

4. An application for a construction time limit extension shall be accompanied by complete working drawings for the construction, a written explanation of the reasons for the requested extension, any other information requested by Planning staff, and a fee as established by City Council resolution.

5. Projects with an initial 18-month construction time limit may receive a maximum 6-month extension for a total time limit of 24 months. Projects with an initial 6 or 12-month construction time limit may receive an extension, provided that such extensions do not result in a total construction time limit exceeding 18 months.

6. Landscaping Extension. When landscaping work, which was approved as part of a larger construction project, is delayed because of inclement weather, the applicant may file with the City Manager for an extension to complete the landscaping work. The request must be filed prior to, and may not exceed 30 days beyond, the final building inspection approval, issuance of an occupancy permit, or expiration of the 90-day landscaping time limit granted per Subsection C2 above, whichever occurs later. The City Manager shall grant said extension only if, in his or her opinion, such extension is warranted because of delays caused by inclement weather.

7. Construction Time Limit Extension Factors. Requests for construction time limit extensions shall be determined based on one or more of the following factors:

- a. Site topography
- b. Site access
- c. Geological issues
- d. Neighborhood considerations
- e. Other unusual factors
- f. Extreme weather events
- g. Unanticipated discovery of archeological resources
- h. Other conditions that could not have been reasonably anticipated at the time of project application

SECTION 4 • ACKNOWLEDGEMENT OF HOURLY BILLING COSTS

This Section advises you of the costs that may be involved in processing Planning-related applications and/or appeals. You are hereby requested to acknowledge this information and agree to be responsible for all expenses incurred in the processing of your application(s)/appeal(s).

As the property owner/appellant, you agree to be responsible for the payment of all costs, both direct and indirect, associated with the processing of the applications(s)/appeals(s) referenced below. Such costs may be incurred from the following source:

Hourly billing costs as of July 1, 2018, (subject to change without notice):

Director of Planning & Building	\$ 85.00
Associate Planner	\$ 59.00
City Attorney	\$ 240.00
Specialized Planning Consultant	Actual costs + 25% overhead

For all applications and appeals, an initial deposit is required at the time of submittal, with the amounts determined by City Council resolution. In addition to the initial deposit, the property owner/appellant may be required to make further deposits for anticipated work. Invoices are due and payable within 15 days. Application(s) /or appeal(s) will not be placed on an agenda until these deposits are received.

SECTION 5 • ACKNOWLEDGEMENT OF RESPONSIBILITY

This Section applies to all projects that receive design review. To avoid misunderstandings regarding changes to building plans that have received Design Review, please read and acknowledge the below information. To help your project proceed in an expeditious and harmonious manner, the City of Belvedere wishes to inform you of several basic understandings regarding your project and its approval. By you and your representative signing this document, you are acknowledging that you have read, understand, and will comply with each of the points listed.

1. Once Design Review approval has been granted, construction plans may be submitted to the City. The construction plans shall be **identical** to the plans approved for design review. (BMC §20.04.010). Deviations from the plans approved for Design Review cannot be approved except by an amendment to the Design Review approval. It is the applicants' responsibility to assure conformance, and the failure of staff to bring nonconformities to the applicants' attention shall not excuse the applicant from such compliance.
2. Comments from City staff regarding the project shall neither be deemed official nor relied upon unless they are in writing and signed by the City Manager or his designee.
3. Without the prior written approval of the City, construction on the project shall not deviate in any manner, including but not limited to form, size or color, from approved construction plans. If at any time during construction, and without such written approval, construction on the project is found by a member of City staff to deviate from the approved construction plans in any manner, an official STOP WORK ORDER will be issued by the City, and there shall be a total cessation of all work on the project.
4. If such a STOP WORK ORDER is issued, the City may initiate proceedings to impose administrative penalties or nuisance abatement proceedings and issue an order to show cause, which will compel the undersigned property owner to appear before the City Council and show cause why the work performed does not deviate from the approved plans and why such work should not be condemned as a public nuisance and abated. (Authority: Belvedere Municipal Code Chapters 1.14 and 8.12)

SECTION 6 • ADDITIONAL INFORMATION FOR APPLICANTS

Story Pole Requirement

Preliminary Story Poles sufficient to indicate the height and shape of the proposed structure or additions shall be placed on the site **at least twenty (20) days** prior to the first meeting date at which this application will be heard. **Final Story Poles** must be placed at the site **at least ten (10) days** prior to the first meeting date and removed no later than ten (10) days following the final city action on the project application. Story poles shall be connected at their tops with colored tape or ribbon to clearly indicate ridges, eaves, and other major elements of the structure.

Limit on the Number of Administrative and Planning Commission Design Review Approvals

Pursuant to Belvedere Municipal Code Section 20.04.020(B)(1)(a), for a site or structure with no existing active Design Review approval, during any twelve-month period, an applicant may obtain up to four administrative approvals, which may be in the form of either Staff Approval, Design Review Exception, or a combination of the two. However, there is no limit to the number of times an applicant may apply for Planning Commission Design Review. **Any such administrative or Planning Commission Design Review approval(s) shall be valid for a period of twelve (12) months from the date of approval, unless a building permit has been issued for the project within said twelve (12) month period, in which case the Design Review approval shall be valid as long as there is an active building permit for the project.**

Once a project has been approved by Planning Staff or the Planning Commission, administrative approvals to amend the existing active Design Review approval for that project shall be limited to three such approvals at any time during the lifetime of the underlying Design Review approval, plus one such approval during the process of obtaining final inspection approval of the project. **Any such administrative approval(s) granted shall NOT extend the twelve (12) month term, of the underlying Design Review approval, or the building permit construction time limit if a building permit has been issued for the project.**

**STATEMENT OF PROPERTY OWNERSHIP,
CERTIFICATION OF APPLICATION, & DESIGNATION OF REPRESENTATIVE**

All property owners must complete and sign the section below which is applicable to your property.

Street address of subject property: 475 Belvedere Avenue

Assessor's Parcel No(s). of subject property: 060-241-129

➤ **Properties Owned by a Trust, LLC, Corporation, Partnership, or Other Entity**

Please provide proof of ownership and of the signer's authority to enter into contracts regarding this property. One or more of the following documents *may* contain the necessary information.

- **For Trusts:** the **Trust Document** or a **Certificate of Trust**, including any attachments thereto; Property Deed; Certificate of Title Insurance.
- **For other entities:** **Articles of Incorporation; Partnership Agreement; Property Deed; Certificate of Title Insurance;** written **certification of facts** by an attorney.

Photocopies are acceptable. To ensure privacy, documentation will be shredded in a timely manner, or, upon request, returned to the applicant.

I, Michael Davis and Janet Johnstone, state under penalty of perjury under the laws of the State of California that the above-described subject property is owned by a Trust, LLC, Corporation,

Project Address: _____

Partnership, or other entity and that my signature on this application has been authorized by all necessary action required by the LLC, Corporation, Partnership, or other entity.

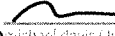
I hereby make application for approval of the design review requested. I have read this application and hereby certify that the statements furnished above and in the attached exhibits present the data and information required for the design review and initial environmental evaluation to the best of my ability, and that the facts, statements and information presented are true and correct to the best of my knowledge and belief

I agree to be responsible for all costs incurred in connection with the processing of my application and appeals, if any. And I agree to be bound by Section 5, "Acknowledgement of Responsibilities," above and representations one through four contained therein.

In the case of an application for revocable license, I agree that, upon approval by the City Council of the revocable license requested, I will promptly execute a license drafted by the City, have it notarized, and return it to the City so that it may be recorded.

I understand that the contents of this document are a Public Record. If more than one signature is required by the owner entity to make this application, please have all signers sign below.

Signed this 8th day of July, 2021, at Belvedere, California.

Signature 
Michael Davis (Jul 9, 2021 11:49 PDT)

Signature J. Johnstone

Title(s) Trustee

Title(s) Trustee

Trustee(s) Partners: Limited or General Corporation Other _____

Name of trust, LLC, corporation, or other entity: Davis Family Trust

➤ **Properties Owned by Individuals**

I, _____, state under penalty of perjury under the laws of the State of California that I am the record owner of the above-described subject property.

I hereby make application for approval of the design review requested. I have read this application and hereby certify that the statements furnished above and in the attached exhibits present the data and information required for the design review and initial environmental evaluation to the best of my ability, and that the facts, statements and information presented are true and correct to the best of my knowledge and belief.

I agree to be responsible for all costs incurred in connection with the processing of my application and appeals, if any. And I agree to be bound by Section 5, "Acknowledgement of Responsibilities," above and representations one through four contained therein.

In the case of an application for revocable license, I agree that, upon approval by the City Council of the revocable license requested, I will promptly execute a license drafted by the City, have it notarized, and return it to the City so that it may be recorded.

I understand that the contents of this document are a Public Record.

Signed this _____ day of _____, 20____, at Belvedere, California.

Signature _____

Project Address: _____

➤ **Designation of Owner's Representative (Optional)**

I hereby authorize Debbi Peterson to file on my behalf any applications, plans, papers, data, or documents necessary to obtain approvals required to complete my project and further authorize said person to appear on my behalf before the Planning Commission and/or City Council. This designation is valid until the project covered by the application(s) is completed and finalized or until the designation is rescinded in writing.

Signature of Owner:  _____ Date: 7/8/21

Signature of Representative: Debbi Peterson _____ Date: 7/8/21






Microsoft Word - APPLICATION FOR DESIGN REVIEWrev7-25-18.doc

Final Audit Report

2021-07-09

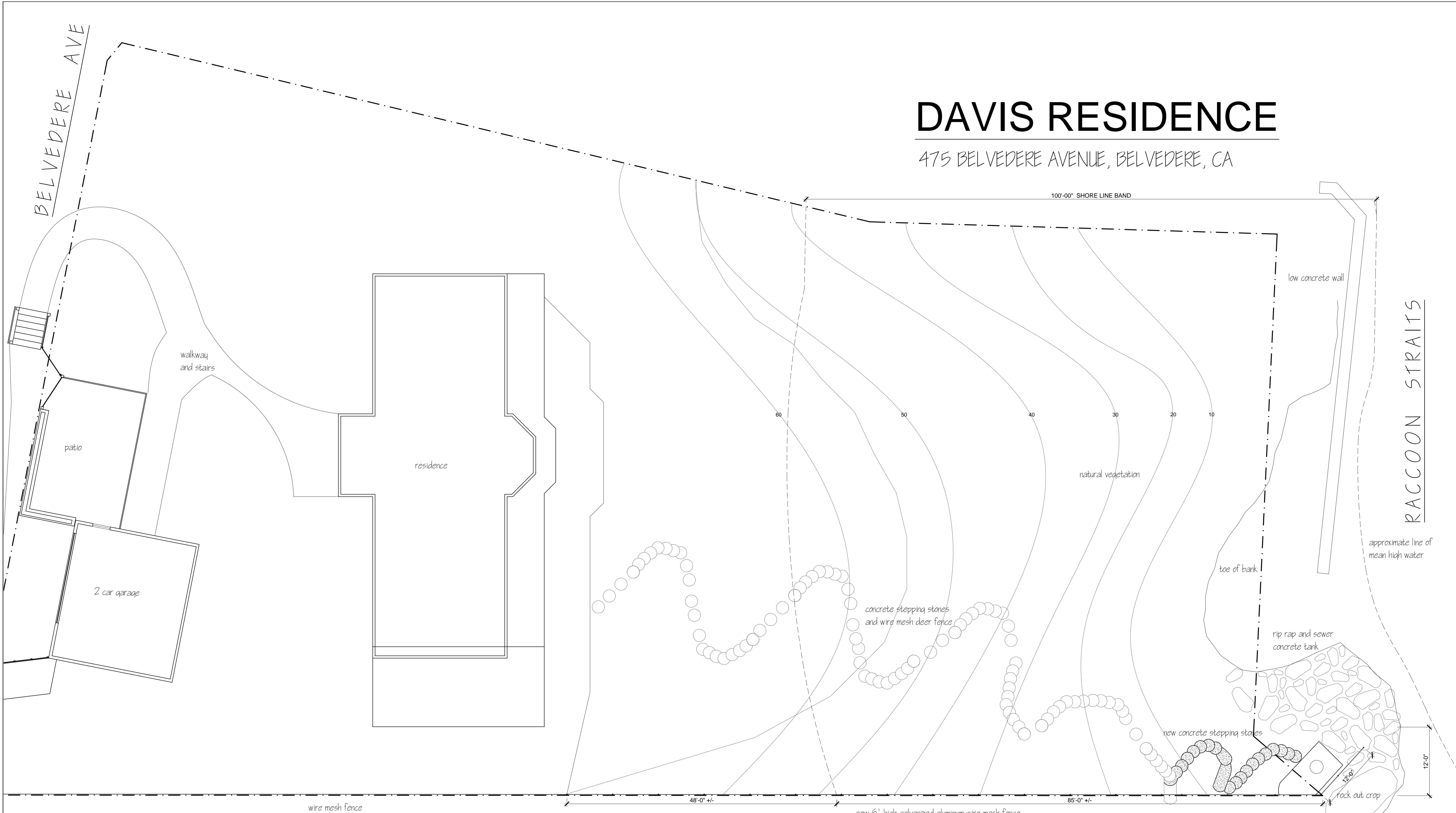
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By:	debbi peterson (debbipetersonarchitect@comcast.net)
Status:	Signed
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"Microsoft Word - APPLICATION FOR DESIGN REVIEWrev7-25-18.doc" History

-  Document created by debbi peterson (debbipetersonarchitect@comcast.net)
2021-07-09 - 6:46:55 PM GMT- IP address: 73.170.99.221
-  Document emailed to michael davis (michael@arlendavis.org) for signature
2021-07-09 - 6:48:08 PM GMT
-  Email viewed by michael davis (michael@arlendavis.org)
2021-07-09 - 6:49:06 PM GMT- IP address: 174.194.195.14
-  Document e-signed by michael davis (michael@arlendavis.org)
Signature Date: 2021-07-09 - 6:49:49 PM GMT - Time Source: server- IP address: 174.194.195.14
-  Agreement completed.
2021-07-09 - 6:49:49 PM GMT

DAVIS RESIDENCE

475 BELVEDERE AVENUE, BELVEDERE, CA



Public Access and Open Space

This is a private residential property and there are no areas to be provided as public access, open space or view corridors.

Site Characteristics

The project site is a 24,042 sf parcel with sloping topography downslope from Belvedere Avenue. The site is developed with a 2 story single family home and a detached 2 car garage.

Zoning Information

AP#: 060-241-129
Parcel Size: 24,042 sf
Zoning: R15

Sheet Index

- A-0.0 Site Plan and Project Information
- A-0.1 Record of Survey
- A-0.2 Existing Conditions Photos, Expanded Survey, Vicinity Map

Project Description

This project is the addition of 145 linear feet of new fence and 20 stepping stones at 475 Belvedere Avenue. 97 linear feet of new fence and the 20 stepping stones are proposed within the shoreline band and therefore in the jurisdiction of the BCCDC. An application for design review and an application to BCCDC have been submitted simultaneously.

Site Plan Notes

1. Site information and building placements based on Record of Survey No. 422.2, field measurements and marin maps.org.
2. All existing tree/ vegetation to remain
3. All improvements shown are existing unless noted as new

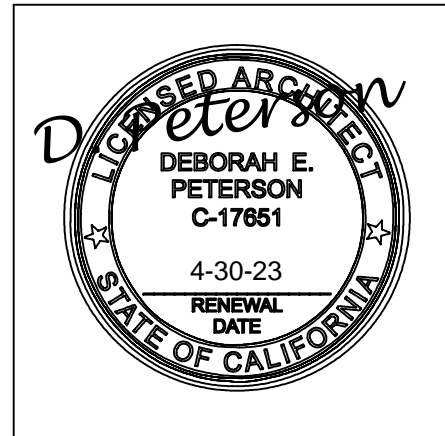
PROPOSED SITE PLAN

dpa
44 Greenfield Avenue San Anselmo CA 94960
415 559 0548
debbipetersonarchitect@comcast.net
Debbi Peterson Architect

Michael Davis and Janet Johnstone
475 Belvedere Avenue Belvedere, Ca 94920
415 408 8658

Davis
Site Improvements
475 Belvedere Avenue Belvedere, CA 94920
A.P.# 060-241-29

Site Plan

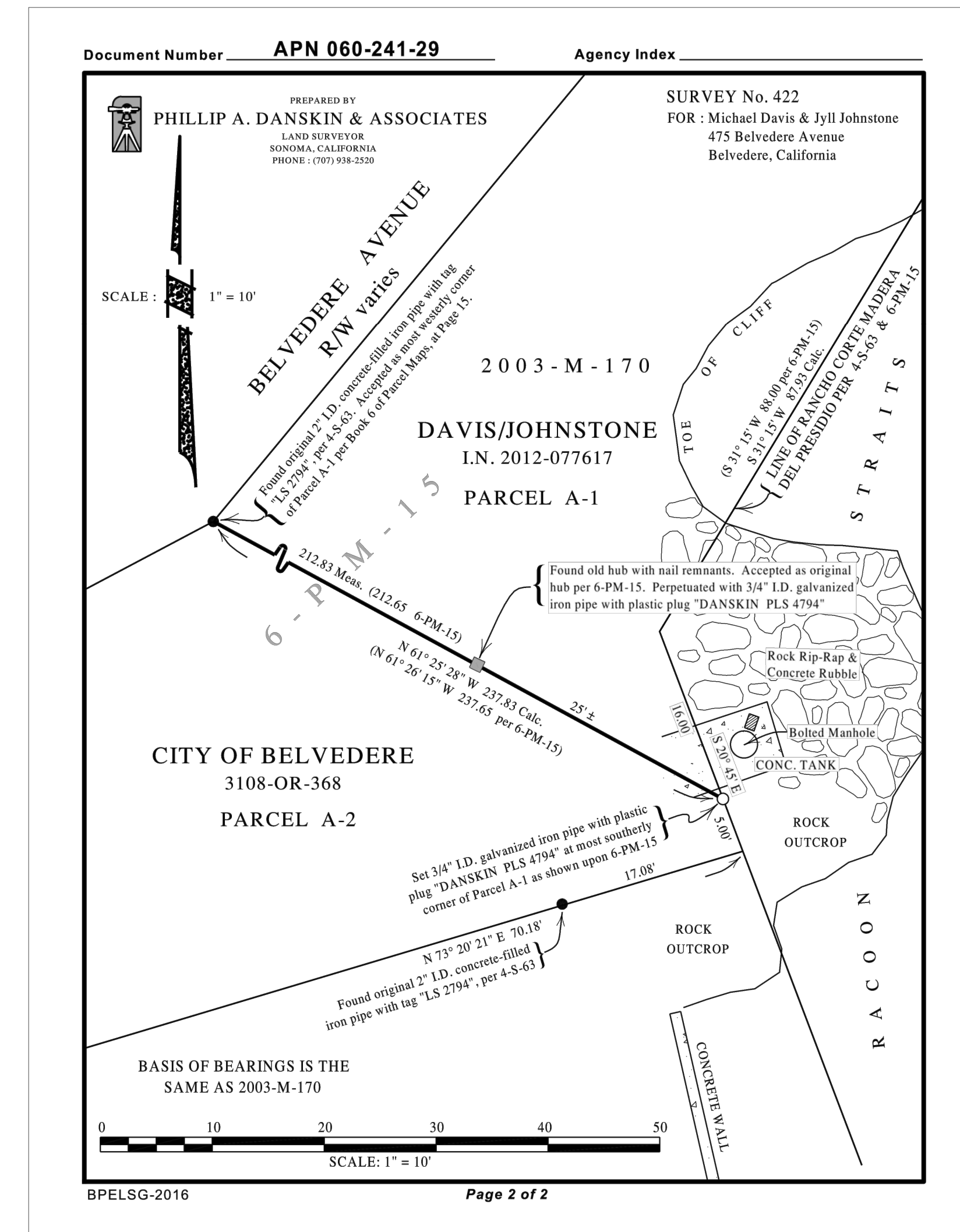


Scale	1/8" = 1'-0"
Date	7/8/21
Revision	

A-0.0



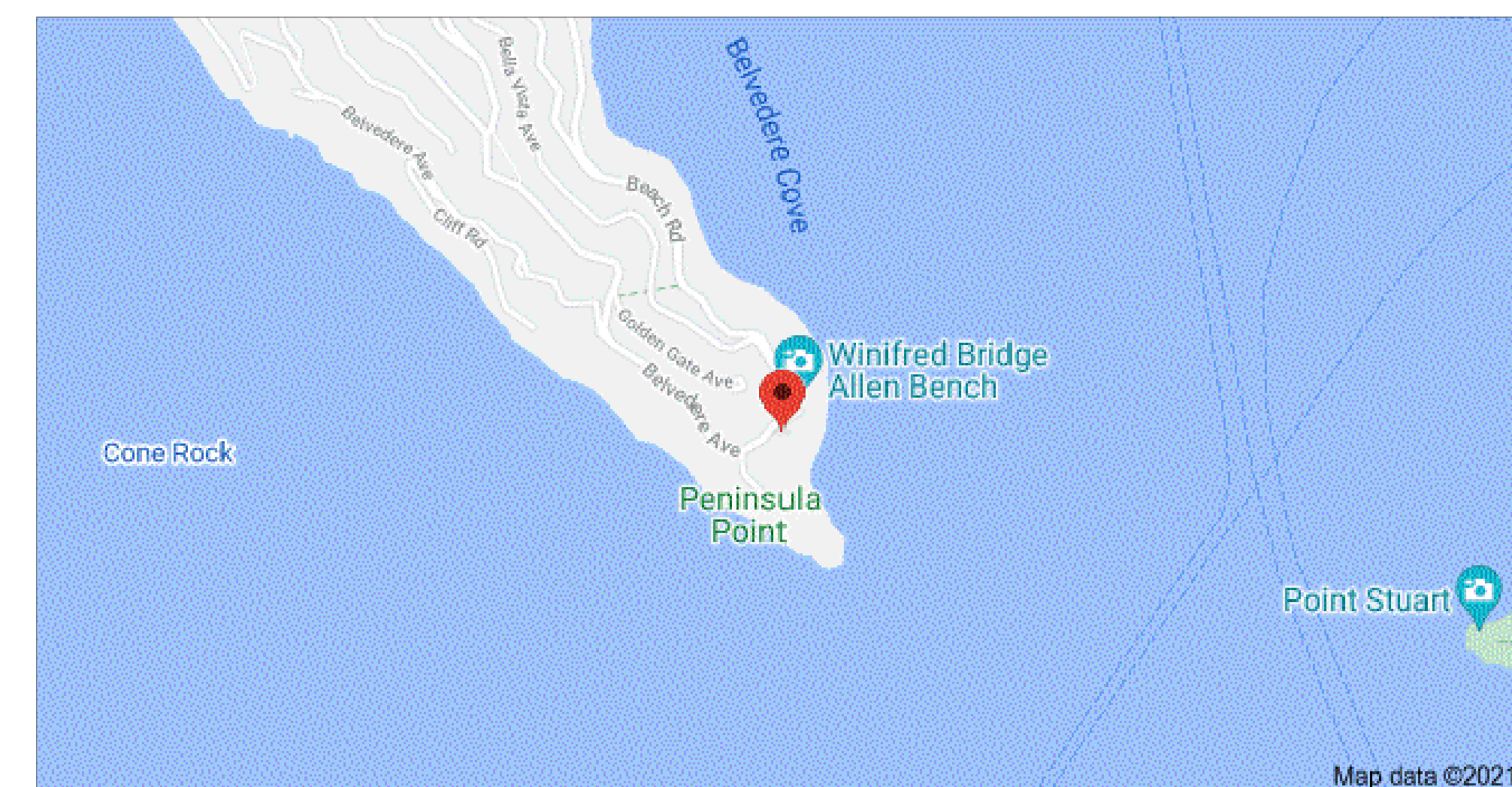
Looking from shore line to new wire mesh fence and stepping stones



Expanded survey of property line corner at shore line



Looking toward shore line with new wire mesh fence and stepping stones in the foreground
Sanitary sewer concrete tank and rip rap also shown



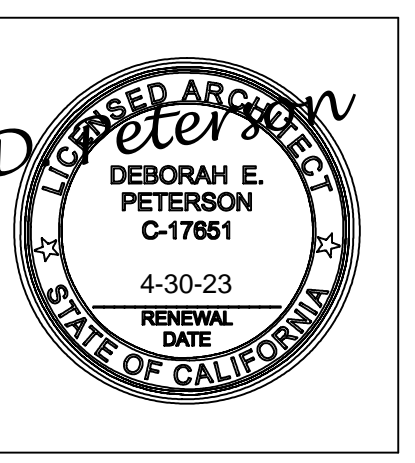
Vicinity Map: 475 Belvedere Avenue

dpa
44 Greenfield Avenue San Anselmo CA 94960
415 559 0548
debbipetersonarchitect@comcast.net
Debbi Peterson Architect

Michael Davis and
Janet Johnstone
475 Belvedere Avenue
Belvedere, Ca 94920
415 408 8658

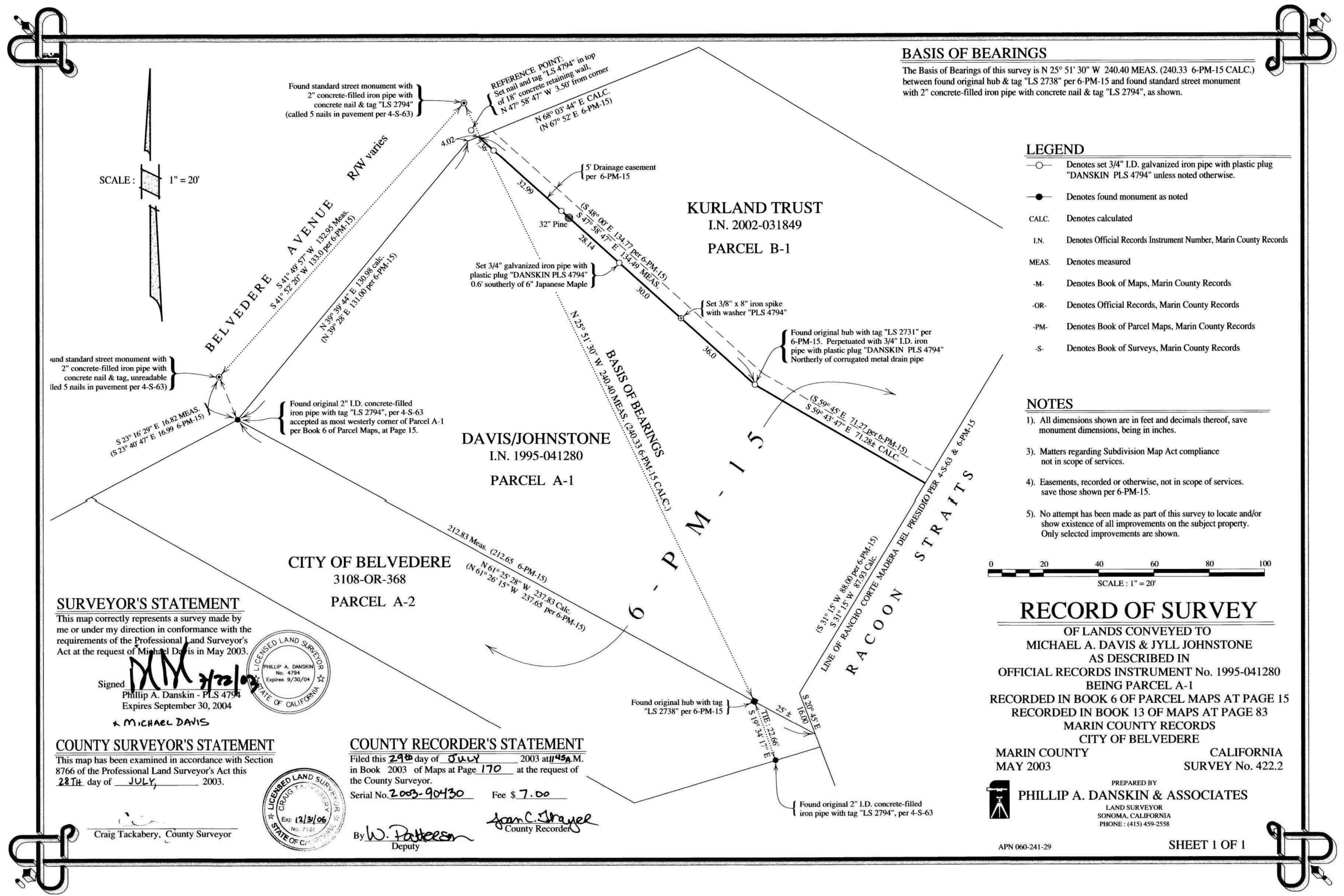
Davis
Site Improvements
475 Belvedere Avenue
Belvedere, CA 94920
A.P.# 060-241-29

Existing
Photos,
Expanded
Survey,
Vicinity Map



Scale	n/a
Date	7/8/21
Revision	

A-0.2



SURVEYOR'S STATEMENT
This map correctly represents a survey made by me or under my direction in conformance with the requirements of the Professional Land Surveyor's Act at the request of Michael Davis in May 2003.

Signed *Philip A. Danskin*
Philip A. Danskin - PLS 4794
Expires September 30, 2004
MICHAEL DAVIS

COUNTY SURVEYOR'S STATEMENT
This map has been examined in accordance with Section 8766 of the Professional Land Surveyor's Act this 28th day of JULY, 2003.

Craig Tackabery, County Surveyor

COUNTY RECORDER'S STATEMENT
Filed this 29th day of JULY, 2003 at 11:45 A.M. in Book 2003 of Maps at Page 170 at the request of the County Surveyor.

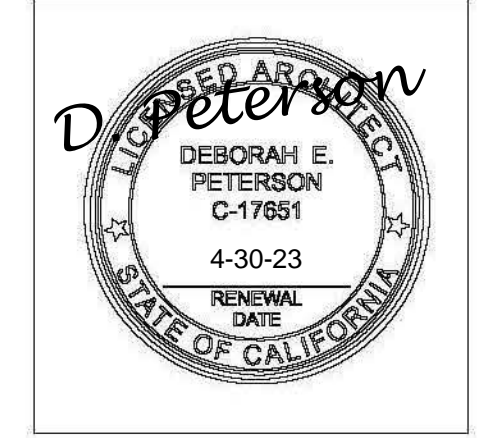
Serial No. 2003-90430 Fee \$ 7.00
By *W. Patterson*
Deputy County Recorder

dpa
44 Greenfield Avenue San Anselmo CA 94960
415 559 0548
debbipetersonarchitect@comcast.net
Debbi Peterson Architect

Michael Davis and
Janet Johnstone
475 Belvedere Avenue
Belvedere, Ca 94920
415 408 8658

Davis
Site Improvements
475 Belvedere Avenue
Belvedere, CA 94920
A.P.# 060-241-29

Record
of
Survey



Scale	as shown
Date	7/8/21
Revision	

A-0.1

CITY OF BELVEDERE

ORDINANCE NO. 2018-7

**AN ORDINANCE OF THE CITY OF BELVEDERE
AMENDING TITLE 19, ZONING, AND TITLE 20, ARCHITECTURAL AND
ENVIRONMENTAL DESIGN REVIEW, RELATING TO FENCING**

THE CITY COUNCIL OF THE CITY OF BELVEDERE DOES ORDAIN AS FOLLOWS:

SECTION 1. Findings.

- A. The City Council held six public hearings in 2016 to receive public comment and discuss issues related to deer management. The meetings were well attended and members of the public expressed a range of concerns and possible solutions. Two points of agreement for managing deer impacts were agreed upon: 1) the need for effective fencing; and 2) the use of deer resistant plants for landscaping.
- B. The Deer Fence Task Force Committee was formed to consider suggestions for deer resistant landscaping and to make recommendations for fences to deter deer from entering properties.
- C. The Deer Fence Task Force Committee completed a thorough review of the Municipal Code provisions and Planning processes related to fences and prepared proposed Zoning Code amendments in order to implement the Council's direction stated above (the "Code Amendments").
- D. The Planning Commission is responsible for providing a recommendation to the City Council for proposed Zoning Ordinance amendments pursuant to the Belvedere Municipal Code and Government Code section 65853 et seq.
- E. The Code Amendments are exempt from the provisions of the California Environmental Quality Act ("CEQA") per CEQA Guidelines Section 15061(b)(3), as the Code Amendments can be seen with certainty to have no possibility for causing a significant effect on the environment.
- F. The Code Amendments are adopted to protect and promote the public health, safety, and general welfare of residents, and to preserve and enhance the environmental setting, unique characteristics, and aesthetic quality of the City of Belvedere.
- G. The Planning Commission did hold a duly noticed and advertised public hearing on March 20, 2018 and April 17, 2018 and considered all evidence in the record and any testimony received during the public hearing.
- H. At its May 15, 2018 meeting, the Planning Commission held a public hearing regarding the proposed Code Amendments and recommended that the City Council approve the Code Amendments, and determined that they are consistent with the goals, policies, and programs of the Belvedere General Plan and are consistent with the objectives of the Zoning Ordinance.
- I. At its July 9, 2018, and September 10, 2018, meeting, the City Council held a public hearing regarding the proposed Code Amendments and the City Council approved the Code Amendments and determined that they are consistent with the goals, policies and programs of the Belvedere General Plan and are consistent with the objectives of the Zoning Ordinance.

SECTION 2. **Amendment.** Section 19.08.200 of the Belvedere Municipal Code is hereby amended to read as follows:

19.08.200 Fence. "Fence" means any structural device permanently affixed to the ground, forming a physical barrier which divides or partitions open space or adjacent properties by means of wood, mesh, metal, chain, brick, stake, plastic or other similar material, and includes a solid wall or hedge as defined in Section 8.28.020 of this Code, or any combination thereof. ~~used as a fence.~~

SECTION 3. **Amendment.** Section 19.20.040 of the Belvedere Municipal Code is hereby amended to read as follows:

19.20.040 Design review required. All new structures, and all exterior remodeling, alteration, addition or other construction, including retaining walls, swimming pools, or fences or barriers of any kind and the like shall be subject to the Design Review process as required in Title 20 of this Code.

SECTION 4. **Amendment.** Section 19.48.190(A) of the Belvedere Municipal Code is hereby amended to read as follows:

19.48.190 Residential zones—Certain facilities and structures permitted in yards. All facilities and structures permitted in yards are subject to Design Review, unless explicitly exempted pursuant to Chapter 20.04.015. Maximum heights for facilities and structures in yards shall only be allowed where there is no significant view blockage from any public or private property. Provided that adequate access for public health and safety is maintained, the following structures and facilities are permitted in required yards in residential zones, subject to the limitations herein:

A. Fences. Fences are permitted in any yard as follows:

1. Fences shall be permitted to a maximum height of six feet above Existing Grade ~~grade~~ with decorative elements permitted up to a height of six feet--six inches at reasonable intervals.

2. Fences shall be located at least two feet from the adjacent curb or pavement edge.

3. Where a yard abuts water, a fence parallel to the water shall be limited to four feet in height above Existing Grade.

4. A trellis or arch over an opening in a fence is permitted to a maximum height of nine feet.

5. A hedge, as defined in Section 8.28.020, may exceed the height limit for fences where the extra height is agreed upon in writing by all immediately adjacent neighbors. Such fence is subject to the provisions of Chapter 8.28 of the Belvedere Municipal Code.

5. ~~Subject to the provisions of Chapter 8.28 of this Title, a hedge, as defined in Section 8.28.020, may exceed the height limit for fences where the extra height is agreed upon by all immediately adjacent neighbors.~~

6. Fences in the R-15 Zone may exceed six feet in height to a maximum of eight feet from Existing Grade where the extra height is agreed upon in writing by all immediately adjacent neighbors and subject to Design Review, provided that such fence is not adjacent to public space.

67. Fences in the R-1L and R-2 zoning districts may exceed six feet in height (6') to a maximum height of eight feet (8') from Existing Grade, with decorative elements permitted up to six inches higher at reasonable interval, with Design Review approval, and based on consideration of one or more of the following factors:

a. The degree to which a higher fence is necessary and reasonable to provide privacy for adjoining properties, or to screen certain features from neighbors or public view;

b. Whether consent of neighbors whose properties adjoin the proposed fence has been obtained;

c. The degree to which a higher fence is appropriate due to the relative heights of buildings and building features on adjoining properties, such as base floor elevation, window locations, floorplate heights, window heights, and overall building heights;

d. The degree to which a higher fence is appropriate due to variations in terrain, including steep or irregular topography, that may render a lower fence aesthetically or functionally impractical or undesirable;

e. Where it is unreasonable to achieve the benefits that would be gained from a higher fence by landscaping alone.

7. Fences or walls exceeding six feet in height pursuant to Section 19.48.190(A)(6) above shall be measured as follows:

a. The height of a fence or wall is measured using the plumb vertical distance between the Existing Grade at the base of the fence or wall to the uppermost part of the fence or wall.

b. The height of a fence or wall is measured on both sides of the structures, with the taller of the two measurements defined as the actual height of the fence or wall.

c. Fences built upon a retaining wall must be setback one foot (1') from the edge of the retaining wall for the fence height to be measured from the top of the retaining wall, not the lower ground level below.

8. Except as otherwise provided in this Section, temporary deer barriers on street frontages are prohibited.

SECTION 5. Amendment. Section 20.04.150 of the Belvedere Municipal Code is hereby amended to read as follows:

20.04.150 Fences and screening. A. Fences should be compatible with the design of the site, structures, and landscaping as whole, should screen garbage

areas, mechanical equipment and accessory structures from public view, and should preserve privacy between adjacent dwellings without significantly blocking views. Temporary deer barriers such as staked wire and chain link are prohibited if installed in the public view, except for purposes of securing site during construction and for protection of new plantings for a period of 90 days or less. Fences and physical screening should be located so as to be compatible with the design of the site and structures as a whole, should conceal and screen garbage areas, mechanical equipment, and structural elements from public view, and should preserve privacy between adjoining dwellings, where practical.

B. Fences should be designed and located so that they are architecturally compatible with the design of the building, are aesthetically attractive, and do not significantly block views from any public or private property. Wire or chain link fences are discouraged, except as temporary barriers on construction sites or new plantings as allowed in this Section.

SECTION 6. Severability. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance, or any part thereof, is for any reason held to be unconstitutional or invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this Ordinance. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance irrespective of the fact that one or more sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases be declared unconstitutional or invalid or effective. To this end the provisions of this Ordinance are declared to be severable.

SECTION 7. Effective Date. This Ordinance shall take effect and be in force thirty (30) days after the date of its passage. Within fifteen (15) days following its passage, a summary of the Ordinance shall be published with the names of those City Council members voting for and against the Ordinance and the deputy City Clerk shall post in the office of the City Clerk a certified copy of the full text of the adopted Ordinance along with the names of the members voting for and against the Ordinance.

INTRODUCED AT A PUBLIC HEARING on September 10, 2018, and adopted at a regular meeting of the Belvedere City Council on October 8, 2018, by the following vote:

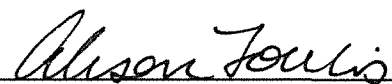
AYES: James Campbell, Nancy Kemnitzer, Claire McAuliffe, Marty Winter, and Mayor Robert McCaskill

NOES: None

ABSENT: None

ABSTAIN: None

APPROVED: 
Robert McCaskill, Mayor

ATTEST: 
Alison Foulis, City Clerk

CERTIFICATION OF CITY ORDINANCE POSTING AND PUBLICATION

I, Alison Foulis, City Clerk of the City of Belvedere, hereby certify regarding the document to which this certificate is annexed:

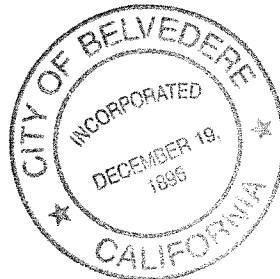
- (a) It is a true and correct copy of the City ordinance.
- (b) The number of the ordinance is 2018-7.
- (c) A Notice of Public Hearing for the July 9, 2018, introduction and first reading of the ordinance was posted in front of City Hall on June 25, 2018, and published in *The Ark*, a newspaper of general circulation published in the county and circulated in the City, on June 27, 2018.
- (d) A Notice of Public Hearing for the September 10, 2018, continued introduction and first reading of the ordinance was posted in front of City Hall on August 27, 2018, and published in *The Ark*, a newspaper of general circulation published in the county and circulated in the City, on August 29, 2018.
- (e) A Summary of the Proposed Ordinance notice was posted on September 24, 2018, in front of City Hall. The notice included a statement that a certified copy of the full text of the proposed ordinance is available for public review in the Office of the City Clerk.
- (f) The same Summary of Proposed Ordinance notice was published on September 26, 2018, in *The Ark*, a newspaper of general circulation published in the County of Marin and circulated in the City of Belvedere.
- (g) A Notice of Adoption of Ordinance 2018-8 was posted on October 10, 2018, in front of City Hall. The notice included the names of those city council members voting for or against the ordinance.
- (h) The same Notice of Adoption of Ordinance 2018-8 was published on October 17, 2018, in *The Ark*, a newspaper of general circulation published in the county and circulated in the City.
- (i) A certified copy of the ordinance with the names of those city council members voting for and against the ordinance was posted in the office of the City Clerk on October 10, 2018.

WITNESS my hand and the official city seal of the City of Belvedere.



Alison Foulis, City Clerk (Seal)

Dated: October 18, 2018









To the Belvedere Planning Department:

Comment on 475 Belvedere Fencing:

We understand the fencing at 475 Belvedere was constructed on an emergency basis to prevent ongoing and severe trespassing problems initiated by the City of Belvedere Parks and Open Space committee's invitation to the general public to go to Artist's View.

Because relatively few went down Artist's View for 45 years before the committee's invitation, property boundaries were not sufficiently marked and existing fencing was not hardened against intrusion by trespassers.

The invitation has created tremendous ongoing problems for neighbors of Artist's View including climbing and falling on manmade and natural hazards on private property (including areas above mean high tide water mark).

At a time when Artist's View development advocates include individual(s) who have litigated personal injury lawsuits, we believe this fencing is just one essential step to help prevent property owner and city liability.

The fencing materials and construction are substantially the same as existing and approved fencing at Golden Gate Lane and at the Ganz lots which are much more visible locations.

For all these reasons we support the approval of the fencing.

Sincerely,

Klaus Johannsmeier and Johannsmeier Family



**CITY OF BELVEDERE PLANNING COMMISSION
STAFF REPORT**

REPORT DATE: 11/3/2021

AGENDA ITEM: 5

MEETING DATE: 11/16/2021

TO: City of Belvedere Planning Commission

FROM: Rebecca Markwick, Senior Planner

REVIEWED BY: Irene Borba, Director of Planning and Building
Emily Longfellow, City Attorney

SUBJECT: Public Hearing to Consider Proposed Ordinance Amendments related to Objective Design and Development Standards - Amendments include adding a new title (Title 22: Objective Design and Development Standards) to the City of Belvedere Municipal Code

RECOMMENDATION

Staff recommends after review of all information, presentations, and public testimony that the Planning Commission adopt a Resolution recommending that City Council adopt a new title to the Belvedere Municipal Code; Title 22: Objective Design and Development Standards.

Staff recommends that the Planning Commission conduct the required public hearing and take the following actions:

MOTION 1 Adopt Resolution recommending City Council adopt a new Title to the Belvedere Municipal Code; Title 22: Objective Design and Development Standards. (**Attachment 1**)

BACKGROUND

The City of Belvedere was awarded a \$160,000 grant in 2019 under Senate Bill 2, the “Building Homes and Jobs Act” to work with other Marin County jurisdictions on several projects, including the development of Objective Design and Development Standards (ODDS) for multi-family projects. The City of Belvedere collaborated with Marin County and nine other Marin County cities on the development of a “toolkit” for creating Objective Design and Development Standards for individual jurisdiction’s multi-family and mixed-use development projects. This effort is intended to result in new design standards that provide clear parameters for multi-family and mixed-use housing projects in Belvedere.

Recent State laws restrict the City of Belvedere’s (City) power to apply discretionary design standards to multifamily housing projects. The immediate purpose of developing the ODDS

Toolkit is to ensure that the City has adequate objective development standards within its Municipal Code to apply to housing projects that utilize State legislation to bypass and/or limit the City's discretionary review processes. The ODDS Toolkit does not change any of the City's existing housing densities or use regulations for private property, but rather adds new prescriptive design standards for those housing projects utilizing State legislation. The design standards regulate such things as a housing development's location on a lot, the location and amount of required vehicular and bicycle parking, the way the project looks and feels from the street, and the project's overall massing, including required setbacks.

The toolkit may also provide benefits in the future as a reference in discussions during the Housing Element adoption process, and it furthers the City's stated housing policies and goals related to the development of multi-family design standards.

Planning Commission – June 16, 2020 (Regular Meeting)

The Objective Design and Development Standards (“ODDS Toolkit”) was introduced to the Planning Commission on June 16, 2020. The audio of the meeting can be found [here](#). This meeting included a presentation by the consultants and provided for an opportunity for initial comments/questions from the public and the commissioners and explained about the applicability of objective standards for Belvedere, the process for ODDS and the timeline. The minutes of this meeting can be reviewed [here](#).

Planning Commission – November 10, 2020 (Special Meeting)

A draft of the ODDS Toolkit was presented at a special meeting of the Planning Commission on November 10, 2020. The audio of the meeting can be found [here](#). This meeting included a presentation from the consultants and again provided for an opportunity for comments/questions from the public and the commissioners. The minutes from the meeting can be found [here](#). The consultants presented an overview of the “Toolkit”, particularly as it related to Belvedere locations for by-right approvals under the objective design and development standards (ODDS). The consultant explained that specific characteristics of Belvedere were considered in the recommendations.

At this meeting a Subcommittee was established which included the Planning Commission Chair (Mark) and Vice Chair (Carapiet) as well as one Planning Commissioner (Hart). The committee was established to assist staff with going through the document and make edits.

Planning Commission – April 28, 2021 (Special Meeting)

A special meeting of the Planning Commission was held on April 28, 2021. The agenda and materials for the meeting can be found [here](#). The audio of the meeting can be located [here](#) and the meeting minutes are [here](#)

No formal action was taken at this meeting; it was a presentation of the draft “toolkit” specific to Belvedere because of the work with the consultants and the subcommittee. The meeting was for the Commission and public to receive and discuss the Belvedere “toolkit” and to be able to ask questions of the consultant and staff.

The consultants outlined the process that was used to create the “toolkit” and discussed the site-specific analysis and site testing on some of the site that were evaluated using the toolkit to see how objective standards would apply. The consultants explained that Belvedere will need to provide for additional housing through its next RHNA cycle, and the toolkit provides a streamlined

approval of projects and the application of objective standards and that this can supplement or replace what is currently in place and would be helpful to provide for acceptable Belvedere objective design and development standards in a streamlined approval process as allowed/required in state law.

The outcome of the planning commission raised several questions and concerns from the commission and the public and the subcommittee would take another look at the document and work to further customize the document for Belvedere.

ODDS Subcommittee

The subcommittee was appointed to assist staff with further edits to the toolkit zones, uses, design, building types and architecture where multi-family housing is permitted.

The Subcommittee met on May 24, 2021. At this meeting the discussion revolved around why ODDS and the need for ODDS, an overview of some of the State laws and a recap of the presentation and comments from the special April meeting of the Planning Commission as well as an update of staff's follow-up discussions with the consultants.

At this subcommittee meeting the discussion of the importance for adopting ODDS was discussed as well as the possibility of adopting an Urgency Ordinance. The Subcommittee discussed the large size of the document, and really questioned why the "Toolkit" was necessary. The takeaway from this Subcommittee meeting was that we needed a more concise document. Staff worked together and redlined the "Toolkit" and reduced it to a 60-page document. Once Staff presented it to the Consultants it was determined that the document would not work, and they encouraged Staff to return to the Subcommittee and explain that the document was not like a "menu" instead it is a comprehensive document where each chapter works together and relies on one another. The subcommittee meeting of August 16, 2021 was a working meeting of the Committee to go through the documents to refine certain areas of the document. The Committee focused a lot of the changes around the development standards for ODDS.

November 8, 2021

The subcommittee meeting on November 8, 2021 was extremely productive. Staff presented a recap of why we need the Toolkit and what our next steps are. The subcommittee members went through the document and discussed concerns and edits that they had. Staff then reported back to the consultants and at this point we have not received comments from the consultants.

The following is a detailed list of the changes that have been submitted to the consultants:

1. Carriage Houses

Why can't they be called ADU's? Can we remove the carriage house from the document? Can we just call them ADU's? The picture shows a carriage house above a garage and our ADU ordinance does not allow that. Is it possible to switch carriage house out for ADU's?

2. Page 12

(1) 4 A (a) Remove the second sentence that starts with "Parcels"

3. Remove sub zones from every zone and remove the use tables for sub zones.

4. Remove the carriage house in all Building Types and Design Site Size tables and insert ADU in all zones.

5. Page 28, Table 7, Parking. The front setbacks is 50'. This is true for all zones. The 50' is too far for the City of Belvedere (COB), especially in lots that the rear is on the lagoon. We do not want parking on the lagoon side on the lots. Is it possible to reduce the number to reflect the development pattern in the COB which has parking in the front.
6. In each zone, there is a "Building Form" table. In the "Ground Floor Finish Level..." "residential" shows a 6" minimum with a foot note. Why is that in the table and where does it come from. Title 19 does not have that requirement. Can it be deleted? Please delete it in all zones if possible.
7. Page 42, Table 22.05.020. Change, fences, rear to 4 feet. Change T4SN.S and T4SM.S to match T3SN. Delete in the footnote, "...if the rear yard abuts the lagoon" It should read Excludes tree. Fencing....
8. Page 41, Screening, 2 B references "finished grade" can you change finished grade to existing grade in the entire document.
9. Page 49, C 1. Is this required of the property owner? Can it be reworded as an option for the property owner?
10. Page 51, H 2 Why are we not requiring screening? Can we remove this sentence so that screening is required?
11. In Chapter 8, each style has a page that is called "Elements of" In each style can you add a footnote stating that roof decks are not permitted?

As noted above, Staff is following up with the consultants on some of the suggest changes and or comments.

DISCUSSION

Housing Legislation

Several State laws have been adopted in recent years that allow for by right and streamlined approvals for qualifying multi-family and mixed-use projects based on satisfying "objective" development standards. Objective standards are defined in state legislation as "involving no personal or subjective judgement by a public official" and "standards that are uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowledgeable by both the development applicant or proponent and the public official prior to submittal."

The most notable bills that allow for by right and streamlined approvals for multi-family housing projects include Senate Bill (SB 35), SB 330 (Housing Crisis Act of 2019) and the Housing Accountability Act. Below for reference, please find brief descriptions.

Senate Bill 35

SB 35, which became law on January 1, 2018, created a streamlined and *ministerial* approval process for certain housing projects, at the request of a developer, in a jurisdiction that fails to issue building permits for its share of the regional housing need by income category during the eight-year Regional Housing Needs Allocation (RHNA) cycle.

SB 35 is intended to increase the supply of market rate and affordable housing in California by requiring local governments to promptly approve eligible projects. To qualify for a streamlined processing, the applicant must propose a multi-family project that deed restricts a specified percentage of the project's units to be affordable. In addition to satisfying affordability requirements, the proposed housing development must satisfy numerous other standards

established by SB 35, including that the project complies with objective zoning and design review standards.

The California Department of Housing and Community Development (HCD) determines if a jurisdiction is subject to SB 35 based on the number of building permits issued to satisfy its RHNA. The City of Belvedere is subject to SB 35 based on the number of building permits that have not been issued for affordable housing units during the current Housing element cycle.

Senate Bill 330 (SB 330)

SB 330 (Housing Crisis Act of 2019) establishes regulations that sunset on January 1, 2025, as a means, to address the current housing conditions (“crisis”) in the state. SB 330 identifies objective development and design standards as a means, to streamline development projects. This bill applies to residential development projects and mixed-use development projects with two-thirds of the project dedicated to residential development. This applies to a housing development defined as 2 or more units.

Housing Accountability Act

The Housing Accountability Act (HAA) (Govt Code Section 65589.5(j)) allows for a discretionary review process however, it prohibits an agency from disapproving a housing project if it complies with the agency’s “applicable, objective general plan, zoning, and subdivision standards and criteria” unless it finds that the project would have a “specific, adverse impact upon the public health and safety” that cannot be mitigated. The Housing Accountability Act was passed in 1982.

SB 1485

Applies only in the Bay Area for cities that have not met production requirements for above moderate income housing (120% Average Median Income). Adds a new class of projects that eligible for SB 35 streamlined approval, if project provides at least 20% Above-Moderate units, and project 10 or more units. It is unlikely that this applies to Belvedere at this time but gives indication of the State’s recognition that the affordability requirements of SB 35 do not provide enough developer incentive.

The 2017 Housing Package included several bills that further strengthened the Housing Accountability Act (AB 678, AB 1515 and SB 167). These bills amended the act to, among other things, (a) increase the agency’s burden of proof in litigation, (b) authorize housing organizations to enforce its provisions, (c) authorize a court to approve the project if the local agency refuses to comply with a court order compelling compliance with the act.

It is staff’s understanding that almost every multi-family housing project (defined as 2 or more units) consistent with the General Plan densities would be considered an eligible project under the Housing Accountability Act. However, the HAA does not preclude discretionary review, such as the review of a Design Review Permit application, of multi-family housing projects and therefore staff will need to consider whether to apply the toolkit to HAA eligible projects.

Governor Newsom signed Senate Bill (SB) 9 on September 16, 2021. SB 9 allows for homeowners in the state to legally split their single-family lot into two separate parcels. Up to two units can be built on each parcel. Pursuant to the state law, local agencies must ministerially approve subdivisions of one lot into two without discretionary review or a hearing. Local agencies are limited to imposing objective zoning and design standards. SB 9 differs from recent Accessory Dwelling Unit (ADU) legislation in that it allows for a lot to be split, whereas an ADU cannot be sold separately from the primary residence. After an SB 9 lot split, the new structure (whether it is

a single-family dwelling or a duplex) can be sold to a new owner. Under SB 9, a homeowner can build a maximum of two units on each parcel. The bill requires that each new lot be a minimum size of 1,200 square feet. The bill also requires that the split results in two new lots of approximately equal size (60/40 split at most). The lot split cannot involve the demolition or alteration of affordable housing, rent-controlled housing, or housing occupied by a tenant in the past three years. Due to the recent adoption of this legislation, the proposed ordinance does not include provisions making the toolkit applicable to proposed projects submitted to the City pursuant to SB 9.

Staff would recommend that the Commission review the League of California Cities [website](#) for upcoming Housing Bills that are being reviewed.

RHNA- Regional Housing Needs Allocation

The Regional Housing Needs Allocation (“RHNA”) is a State-mandated process that identifies the number of housing units by affordability level¹ that each California jurisdiction must accommodate in their Housing Element. Since 1969, State law requires that all jurisdictions must plan to meet their “fair share” of housing for the community.

The objectives of RHNA are:

- Increase housing supply and mix of housing types, tenure, and affordability in all cities and counties in an equitable manner.
- Promote infill development and socioeconomic equity, protect environmental and agricultural resources, encourage efficient development patterns and achieve GHG reduction targets.
- Promote intraregional jobs-housing relationships including balance between low-wage jobs and affordable housing.
- Balance disproportionate household income distributions (more high-income RHNA to lower- income areas and vice-versa).

California Housing and Community Development (“HCD”) identifies the total number of units, across all income groups for which the region must plan for during the eight (8) - year RHNA cycle. The next cycle is 2023- 2031.

The Association of Bay Area Governments (“ABAG”) is responsible for allocating RHNA numbers among the Bay Area jurisdictions. On June 9, 2020, HCD released its Regional Housing Needs Determination for the current Housing Element cycle to ABAG. A total of 441,175 housing units were allocated to the Bay Area for the 2023-2031 Housing Element cycle, almost doubling the needs determination from the most recent 2012 cycle. Marin County’s RHNA allocation increased from 2,298 units to 14,210 units.

Marin’s increased RHNA numbers reflect changes to State law and methodology changes in allocation calculations. For example, SB 828 adopted in 2018, allows the HCD to consider both existing and future housing need. Additionally, ABAG identified “high resource” and “high opportunity” areas, as a way to address racial equity concerns, and allotted increased units to these areas. A high opportunity and resource area is one that is near public transit, contains amenities

¹ Affordable housing levels are defined as a percentage of Area Median Income (“AMI”), established by HCD and include very low income (30%-50% AMI), low income (50%-80% AMI), and moderate income (“80%-120% AMI).

conducive to childhood development and economic mobility, including low poverty rates, high home values, high education values, high school test schools, and high employment rates. Belvedere, along with most of Marin County, qualifies as a high opportunity and resource area for purposes of RHNA allocation. Additionally, State law now prohibits stable population numbers or prior housing underproduction as justifications to reduce a jurisdiction's RHNA allocation.

A city accommodates its RHNA numbers by identifying housing sites in its Housing Element. This does not indicate that development proposals are under review, or will necessarily be submitted; rather, the Housing Element indicates possible housing site availability. HCD must certify each jurisdiction's Housing Element, and if unapproved, a city may challenge HCD's determination. A city without a compliant Housing Element may face legal action from the State Attorney General, which may result in fines between \$10,000 to \$600,000 per month until a legal element is adopted.

Currently, Belvedere was allocated a total of 160 units, up from 16 units in the last cycle. Belvedere's units include: 1) 49 units very low income (<50% AMI); 2) 28 units low income (50-80% AMI); 3) 23 units moderate income (80-120% AMI); 4) 61 units above moderate income (>120% AMI).

Belvedere appealed its RHNA allocation, however, it was denied. The City will be required to accommodate a much higher RHNA number in its upcoming Housing Element than in the past. City staff has chosen a Housing Element consultant to identify sites that satisfy Belvedere's allocation during the Housing Element process.

TOOLKIT CUSTOMIZATION

The Objective Design and Development Standards (proposed as a new Title 22 in the City's Municipal Code) is a kit of parts organized around the range of zoning districts and standards that address the range of sites and physical conditions throughout various jurisdictions in Marin County. The project consultant, Opticos Design, distributed the Final Objective Design and Development Standards Toolkit to each jurisdiction in February 2021. For the past six months, the City has been working with Opticos on the customization of the ODDS Toolkit.

The toolkit distributed to each jurisdiction included eight zones, which range from lower intensity Edge Neighborhoods to higher intensity Core Neighborhoods and Main Streets. The zones are based on the location and context of the area and described in the toolkit as the "transect." The transect ranges from "natural" to "urban." As part of the project, each jurisdiction will decide which zones to adopt and where in the community to apply the zones.

The draft toolkit provided to all of the participating jurisdictions was 344 pages. The City's customized toolkit is 282 pages. A summary of the substantive modifications that have been made to the draft toolkit received in November 2021. Staff notes that the ODDS "Toolkit" will only apply to sites that have multi-family zoning and applying under the Housing Accountability Act (HAA), Senate Bill 330 and Senate Bill 35. The Municipal Code is being amended to include a new title (Title 22: Objective Design and Development Standards). Title 22 includes objective design and development standards that will be used to evaluate qualifying multi-family housing projects submitted to the City of Belvedere. Pursuant to recent state legislation, jurisdictions are limited to using objective design and development standards to evaluate certain housing projects. Title 22

will serve as a supplement to the zoning code (Title 19) and will be used to evaluate qualifying multi-family housing projects.

Projects that fall under the HAA, SB 330 and SB 35 are evaluated with objective design standards, which the City of Belvedere does not have. The adoption of the “Toolkit” will provide a set of objective design standards, which will ensure a comprehensive, well-designed project, including landscaping, screening, parking, and specific architectural styles. Without the adoption of a toolkit the City of Belvedere does not have any objective standards to apply to a multifamily housing project.

One of the goals of the subcommittee was to evaluate the document as a whole and how it relates to Chapter 19 of the Belvedere Municipal Code. The Subcommittee spent time reviewing each Zone in the toolkit and ultimately decided to keep T3 Suburban Neighborhood (T3SN), T4 Suburban Neighborhood Small (T4SN.S) and T4 Suburban Main Street Small (T4SMS.S). These three zones parleyed well with existing multi-family zoning. The recent revisions to the toolkit reflect that each of the (T) zones match the existing (R) zoning ordinance as feasible. The Subcommittee then evaluated the development criteria for each of the chosen zones, T3, T4SN.S and T4 SMS.S. It was clear that the Subcommittee’s goal was to get the toolkit development standards as close to Chapter 19 development standards as possible.

Staff, proposes that the Planning Commission recommend to the City Council adopt the ODDS “Toolkit” as is as a protective measure for the City. Additionally, Staff recommends that the subcommittee continue to meet to discuss SB 9 and proposed amendments to Title 22 as deemed necessary by the Subcommittee.

A summary of SB 9 is included as Attachment 4. FAQs for SB 35 and SB 330 are included as Attachment 3.

ENVIRONMENTAL IMPACT

The proposed ordinance and ordinance amendments are not subject to the provisions of the California Environmental Quality Act (CEQA). The ordinance and amendments are exempt from CEQA pursuant to Section 15061(b)(3) of the CEQA Guidelines, which states that a project is exempt from CEQA when the activity is covered by the commonsense exemption that CEQA applies only to projects which have the potential for causing a significant impact to the environment. An activity is not subject to CEQA when it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment. The ordinance will not result in any changes to the permitted locations or densities of multi-family housing.

CORRESPONDENCE

Staff has sent a copy of the public hearing notice for this item to every address in Belvedere and published a notice in *The ARK* newspaper. As of the writing of this report, no correspondence has been received regarding the project.

RECOMMENDATION

Staff recommends that the Planning Commission conduct the required public hearing and take the following actions:

MOTION 1 Adopt Resolution recommending City Council adopt a new Title (Title 22: Objective Design and Development Standards). **Attachment 1**

ATTACHMENT

- Attachment 1: Resolution
- Attachment 2: [Draft](#) Objective Design and Development Standards and [Zoning Map](#)
- Attachment 3: Senate Bill 330 FAQ's and Senate Bill 35 FAQ's
- Attachment 4: Summary of SB 9

**CITY OF BELVEDERE
RESOLUTION NO. 2021-**

**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF
BELVEDERE RECOMMENDING ADOPTION OF A NEW TITLE (TITLE 22)
ADOPTING OBJECTIVE DESIGN AND DEVELOPMENT STANDARDS FOR
QUALIFYING MULTI-FAMILY AND MIXED USE PROJECTS**

WHEREAS, the Housing Accountability Act (HAA), Government Code Section 65589.5, establishes limitations to a local government's ability to deny, reduce the density of, or make infeasible housing development projects, emergency shelters, or farmworker housing that are consistent with objective local development standards and contribute to meeting housing need; and

WHEREAS, pursuant to Government Code section 66300, "Objective Design Standard" means a design standard that involves no personal or subjective judgement by a public official and is uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official before submittal of an application; and

WHEREAS, the City of Belvedere was awarded \$160,000 in state funding established by California Senate Bill 2, the 2018 Building Homes and Jobs Act (SB 2), for actions intended to increase housing in California; and

WHEREAS, City staff participates in the Marin County Planning Directors Housing Working Group, which is comprised of the planning director of each Marin jurisdiction and other planning professionals. The goal of the working group is to look for ways to collaborate on housing issues, share information regarding best practices, and stay up to date with housing legislation and other legal requirements related to housing; and

WHEREAS, the Housing Working Group applied for SB 2 grants as a group effort to address several housing items, including the development of objective design and development standards; and

WHEREAS, the Housing Working Group worked together with a consultant team lead by Opticos Design on the development of the objective design and development standards; and

WHEREAS, the City formed a Subcommittee at the onset of the project to help guide the development of the objective design and development standards. The Subcommittee reviewed reports and other documents, provided collective comments representative of the group, and made recommendations regarding the implementation of the objective design standards in Belvedere; and

WHEREAS, the Belvedere Objective Design and Development Standards (Title 22) addresses current and future State housing legislation intended to limit jurisdiction's discretion related to the approval or denial of multi-family housing, and it furthers the City's stated housing policies and goals; and

Resolution 2021 -
Title 22 Adoption
November 16, 2021

WHEREAS, the amendments are exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15061(b)(3) of the CEQA Guidelines, which states that a project is exempt from CEQA when the activity is covered by the common sense exemption that CEQA applies only to projects which have the potential for causing a significant impact to the environment. When it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA; and

WHEREAS, based on the record, the Planning Commission finds that the ordinance amendments are consistent with and facilitate the Housing Element and the General Plan; and

WHEREAS, the Planning Commission discussed the proposed Objective Design and Development Standards (“ODDS Toolkit”) on June 16 2020, November 10, 2020, and April 28, 2021; and

WHEREAS, on October 27, 2021, notice of the Planning Commission public hearing was published in the Ark Newspaper in compliance with California Government Code Section 65090; and

WHEREAS, on November 16, 2021, the Planning Commission held a public hearing, received the staff report and reviewed a presentation from the Planning Department and received comments from the public and interested parties; and

NOW, THEREFORE, BE IT RESOLVED that

1. The above recitals are true and correct and incorporated as findings herein.
2. The Planning Commission of the City of Belvedere does hereby recommend that the City Council adopt the proposed ordinance amendments as set forth in **Exhibit A** recommending adoption of a new title (title 22) adopting objective design and development standards for qualifying multi-family and mixed-use projects

PASSED AND ADOPTED at a regular meeting of the Belvedere Planning Commission on November 16, 2021, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

RECUSED:

APPROVED: _____
Peter Mark, Planning Commission Chair

ATTEST: _____
Beth Haener, City Clerk

Resolution 2021 -
Title 22 Adoption
November 16, 2021

Exhibit "A"

Planning Commission Resolution

[Draft](#) Objective Design and Development Standards and [Zoning Map](#)

Senate Bill 330: Housing Crisis Act

Frequently Asked Questions

1. What is California State Senate Bill 330?

Senate Bill (SB) 330 (“Housing Crisis Act of 2019) went into effect on January 1, 2020. The bill establishes regulations that sunset on January 1, 2025 as a means to address the current housing conditions (“crisis”) in the State. During the “housing crisis,” cities and counties in urban areas, such as Belvedere, are prohibited from rezoning or imposing new development standards that would reduce capacity for housing or adopting new design standards that are not objective. The demolition of existing housing units is only permitted if replacement units are provided.

2. Is Belvedere subject to SB 330?

Yes, SB 330 defines an “affected city” as any city that is located in an urbanized area or urban cluster, as designated by the United States Census Bureau. Any city with a population less than 5,000 and not located within an urbanized area is exempt. SB 330 requires the Department of Housing and Community Development (HCD) to develop a list of list (“affected cities”) and census designated places within the unincorporated county (“affected counties”). Based on HCD’s determination, 445 of the 482 cities in the state are identified as affected by the provisions of SB 330.

3. What is a preliminary application and what is its purpose?

The Housing Crisis Act allows for an applicant to submit a preliminary application for any housing development project (two or more units and that is at least two-thirds residential by floor area). Submittal of a pre-application allows a developer to provide a specific subset of information on the proposed housing development ahead of providing all of the information required by the jurisdiction for a housing development application. Upon submittal of an application and a payment of the permit processing fee, a housing developer is allowed to “freeze” the applicable fees and development standards that apply to the project while they assemble the rest of the materials necessary for a full application submittal.

4. Can Design Standards be used to evaluate projects?

The City of Belvedere cannot apply new design standards to housing development projects that were adopted on or after January 1, 2020 unless the design standards meet the state law definition of “objective standards.”

5. Is the review process different for SB 330 eligible projects?

Yes, under SB 330, housing development projects that comply with applicable zoning standards and that are not seeking any exceptions, rezonings, or other legislative actions, can be subject to a maximum of five public hearings to consider project approval by the City of

Belvedere. These include informational hearings and appeal hearings. SB 330 does not supersede the requirements in the California Environmental Quality Act (CEQA).

6. What is the Housing Accountability Act, and how does SB 330 strengthen it?

The Housing Accountability Act was passed in 1982. It prohibits an agency from disapproving a housing project if it complies with an agency's applicable, objective general plan, zoning, and subdivision standards and criteria, unless it finds that the project would have a "specific, adverse impact upon the public health and safety" that cannot be mitigated. SB 330 strengthens the Housing Accountability Act by prohibiting an agency from disapproving a housing project or approving the project at a lower density if it complies with the applicable objective standards in place when a project submits a complete preliminary application. In addition, SB 330 includes provisions designed to eliminate delays in the production of housing, such as prohibiting a jurisdiction from holding more than five hearings.

7. What are objective standards?

"Objective zoning standards" and "objective design review standards" involve no personal or subjective judgment by a public official and are uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official prior to submittal. Many common design review criteria, such as compatibility with neighborhood character, are not considered objective standards.

Senate Bill 35: Streamlined Affordable Housing

Frequently Asked Questions

1. What is California State Senate Bill 35?

Senate Bill (SB) 35 went into effect on January 1, 2018 and changed the local review process for certain development projects in the state. SB 35 applies to California Cities and Counties where production of new housing has not met the state-mandated Regional Housing Need Allocation (RHNA) targets. These cities and counties must use a streamlined, ministerial review process for qualifying multifamily residential projects. This process does not allow public hearings or discretionary review (i.e. Design Review).

2. Is City of Belvedere subject to SB 35?

Yes, the City of Belvedere is subject to SB 35.

3. Which projects are eligible?

Housing projects qualify for SB 35 if they satisfy a number of criteria, including:

- Provide the specified number of affordable housing units;
- Comply with objective planning standards;
- Are on sites zoned or planned to allow residential uses;
- Are not located in the coastal zone, agricultural land, wetland, flood plain, or very high fire severity zone;
- Does not demolish any housing units that have been occupied by tenants in the last 10 years; and
- Pays prevailing wages (only for projects with 10 or more units).

4. What is a streamlined, ministerial review process?

A jurisdiction subject to SB 35 must review applications for qualifying housing developments within a statutory time frame. The jurisdiction must determine if the project is eligible for streamlined approval within 60 days of application submittal for projects of 150 or fewer units, or within 90 days for larger projects. If the application is eligible for review under SB 35, then the jurisdiction must review the project within 90 days after application submittal for projects of 150 or fewer units, or within 180 days for larger projects. Ministerial review is based on compliance with set, objective standards and cannot involve subjective judgment. Qualifying projects are also not subject to environmental review under the California Environmental Quality Act (CEQA).

5. Have there been any SB 35 applications in Marin County?

Yes, there have been two recent SB 35 applications in Marin County, a project in Novato and a second project in Marin City. The project in Novato includes a proposal for demolition of

the existing commercial building and construction of a new six-story, 75-foot tall mixed-use building consisting of 8,190 square feet of ground floor retail with 227 residential units on the five floors above. All units are proposed to be affordable. The project in Marin City includes the construction of a new five-story, 56 foot tall building consisting of 74 residential units. Except for the manager's unit, all units are proposed to be affordable.

6. What are objective standards?

“Objective zoning standards” and “objective design review standards” involve no personal or subjective judgment by a public official and are uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official prior to submittal. Many otherwise-common criteria, such as compatibility with neighborhood character, are not considered objective standards.

7. What is the relationship between SB 35 and Density Bonus Laws?

SB 35 projects can utilize benefits under the density bonus laws. State Density Bonus Law requires all cities and counties to offer a density bonus, allow concessions, incentives and waivers of development standards to housing development that include either a certain percentage of affordable housing or housing for qualified individuals. The request for concessions and waivers of development standards are chosen by the housing developer and may include things like exceeding maximum height limits, reduction of minimum parking standards, reduction of required minimum setback or upper story step backs.

Senate Bill (SB) 9 (Atkins) Detailed Analysis

***Prepared by RPPG Senior Policy Advisor, Dan Carrigg*

SB 9 (Atkins) Statewide Rezoning of Single-Family Neighborhoods & Urban Parcel Splits

Rezones by state statute virtually all parcels within single-family residential zones¹ in California allowing for the creation of (when combined with state Accessory Dwelling Unit (ADU) law) up to six,² eight³ or even 10⁴ units; and further authorizes urban parcel splits⁵, without any local discretionary hearing or review, including compliance with the California Environmental Quality Act (CEQA)⁷, as follows:

¹ US Census data indicates there are nearly 6.9 million detached homes in California. State and local historic zones are proposed to be exempted, but most other limitations are of relatively minor impact to the massive and sweeping scope of this bill. This measure is silent on how/if it applies to homes within common interest developments, or homeowner's associations, where development is tightly regulated by codes, covenants, and restrictions (CC&R's) that are agreed to by contract and administered by local association boards under the Davis-Stirling Act. California homeowners can take little comfort in the reliability of any potential exceptions in this bill. The Legislature's objective of eliminating single-family zoning statewide is clear, so this law can be expected to be amended in the future to further its intent. The passage of multiple bills in recent years to expand ADU laws are an example of how the Legislature can be expected to quickly widen this law once it is established.

² At a minimum a developer could create six units by doing the following: (1) First add a junior and separate accessory dwelling units as permitted by recently-enacted state ADU law; then (2) use Sec. 65852.21 in SB 9 to split the single-family home into two units; then (3) apply for an urban parcel split under Sec. 66411.7 of SB 9, and build an additional two units on the newly created parcel.

³ A developer could potentially create even two more accessory dwelling units connected to the subdivision of the original single-family home if the division of the main dwelling is considered a condominium. It could then be argued that each condominium is a separate "lot," so each separate unit is entitled to the development of both junior and separate ADU's. While such an interpretation may seem farfetched, SB 9 only says (Sec. 6582.21 (e)) that ADU's need not be permitted by a local agency when the developer also proposes the parcel to be split. However, the urban parcel split section of SB 9 (Sec. 66411.7) contains no mention of Section 65852.21-, or single-family homes, or ADU's that may be on the parcel prior to a proposed split. Thus, a savvy developer can exploit this by first maximizing and completing development of the parcel prior to requesting a split. Given SB 9's objective is to preempt local zoning, and prohibit related local public hearings and discretionary decisions, the total amount of allowed units on a parcel will likely trigger litigation over how to interpret SB 9's interactions between dividing single-family homes, adding ADU's and splitting parcels.

⁴ Yes, potentially 10 units. There is an omission in the draft of SB 9 that raises the question whether a developer could create two junior accessory dwelling units in addition to the two new dwelling units on the split parcel, because Section 67411.7 (h) in SB 9 only refers to a prohibition on accessory dwelling units per Sec. 65852.2, which applies to accessory dwelling units, but does not also reference Sec. 65852.22 which specifically applies to junior accessory dwelling units. This concern is further bolstered by language in SB 10 (Wiener) which implies that each section contains separate authority and reads as follows: *"(2) Paragraph (1) shall not apply to a project to create no more than two accessory dwelling units and no more than two junior accessory dwelling units per parcel pursuant to Sections 65852.2 and 65852.22 of the Government Code."*

⁵ SB 9 prohibits local agencies from requiring the dedication of a right of way to a newly created parcel created in a backyard. Easements for public services and facilities, or access to a public right of way may be required. Presumably, for a parcel with no access to the street, the residents would park on the street and cross the front parcel on a path along the property line.

⁶ Section 66411.7 in SB 9, which enables urban parcel splits, contain no reference to single family homes, thus enabling a multifamily parcel to be also split.

⁷ It is hard to imagine a bigger CEQA exemption than proposed by SB 9. If a city or county proposed such zoning changes locally CEQA analysis would apply. SB 9 is designed to work around environmental analysis by dictating specific zoning criteria in state statute, and requiring locals to approve applications "ministerially" without public review. Thus, the state Legislature is avoiding environmental reviews in a proposal that rezones virtually all of the single-family lots in the state.

- **Single-Family Residential Zones:** Permits the division, partial or full tear down of an existing single-family home to create two separate residential units, eligible to be sold separately⁸. Since SB 9 also operates in conjunction with ADU law, it will allow even more units to be built on the parcel without public review. All local ordinances⁹ that would physically preclude construction of the two units cannot be enforced. ADU law has separate authority enabling the construction of additional units. Parking is limited to one space per unit¹⁰, and must be eliminated entirely if within one-half mile of transit or if there is a car share vehicle within one block.
- **Urban Parcel Splits:** Permits urban lot splits in residential zones to create two equal parcels of a minimum of 1,200 square feet¹¹. Prohibits the application of local requirements that would physically preclude the construction of two units to be built on each split lot. (Applies to all residential parcels, not just single-family)¹²
- **Area Limitations:** Parcels must be located in a US Census designated urban area or urban cluster.¹³ Parcels within the Coastal Zone are also included¹⁴. Parcels cannot be located

⁸ It is not legally necessary to formally divide the parcel to create two units. Condominiums or townhouses could be created that can be sold separately.

⁹ Many local ordinances that can be ignored by developers under this law can result in significant environmental and community impacts. Applying such an edict statewide with no understanding of the myriad of conditions that may apply to an individual existing parcel makes no sense. For example, some communities have ordinances seeking to preserve heritage trees, maintain views, or allow space for a community bike path. SB 9 preempts the application of such any such ordinances that physically preclude the development of units.

¹⁰ Vehicle ownership in the US average two cars per household. Under SB 9, a developer is able to tear down and convert an existing garage as part of dividing a single-family home into two units. If the developer decides to also build ADU's then this could result in eight or more cars parking on the street. Not requiring adequate parking for new units or eliminating parking entirely will impose a significant burden on adjacent homeowners when residents of the new units' park in front of neighboring properties. Allowing for such major impacts on adjacent property owners statewide in violation of local zoning without opportunity for a public discussion and due process will exacerbate political tensions.

¹¹ Major social equity issues are raised with this provision. 1,200 square foot parcels are shockingly small and will be further limited by four-foot setbacks for ingress and fire access. This will result in rental units crammed together with no green space and certainly no parking. This small square footage will have the most impact in poor neighborhoods that are already densely developed. Executive homes on larger parcels, however, will be less impacted. For instance, a half-acre parcel that is split in half, will still enable separation between units, and areas for greenspace and parking.

¹² SB 9 prohibits a lot that has been split pursuant to its provisions from being split again. It also prohibits an owner of a parcel, or, and any person acting in concert with the owner, to split adjacent lots. These provisions are of absolutely no comfort to those concerned about retaining neighborhood integrity. Unlike a local city or county, the Legislature is removed from any direct implications from what this bill actually means to a neighborhood or a homeowner. If SB 9 is allowing parcels as small as 1,200 square feet, why wouldn't legislators entertain changes next year to this provision on behalf of developers who have their eyes on larger lots? Also, for those who think that 1,200 square feet is a minimum, consider that SB 9 requires locals to allow two units on that lot. Also, the limitation on a developer splitting adjacent lots enables multiple work arounds for savvy investors and attorneys who can maintain separate ownership of adjacent parcels, and nothing stops an investor from freely targeting every other parcel for this activity. And other investors can focus on the rest.

¹³ This exception will increase demand for living on rural parcels outside of these urban census tracts and contribute to further sprawl. Those that have more resources will likely pay a premium to live on parcels not subject to the uncertainties of SB 9. Realtors will likely have to disclose whether a property is within an SB 9 zone.

¹⁴ It is surprising that the Coastal Act is included in this bill. How this measure interacts with the application of the Coastal Act, approved by the voters, deserves additional examination.

within a fire hazard zone¹⁵, hazardous waste site, on land designated for conservation, or within a historic district, as those various terms are defined. If parcel is located in an earthquake fault zone, floodplain or regulatory floodway, the development shall be constructed in compliance with applicable state and local requirements.

- **Parcel Occupancy Limitations:** The affected development cannot affect units occupied by a tenant within the prior three years,¹⁶ units subject to local rent control, units that have been withdrawn (Ellis Act) from rental housing within the prior 15 years, or units restricted by covenant for low- and moderate-income households.
- **Single-Family Home Demolishing:** A single family home may be demolished entirely if a tenant has not lived in the home during the prior three years, otherwise only 25 percent may be demolished, unless a greater percentage is allowed by local ordinance.
- **Setbacks:** Provides that local building setbacks cannot be greater than what is applied to an existing structure and requires those same setbacks to be applied to a structure constructed in the same location and the same dimension as the existing structure.¹⁷ Related conditions include:
 - i. Stipulates that a proposal shall not be rejected solely because it proposes adjacent or connected structures that meeting building code safety standards and are sufficient to allow a separate conveyance.¹⁸
 - ii. Permits local governments to require four-foot setbacks from the rear and side lot lines in other circumstances.¹⁹
 - iii. Requires units that are proposed to be connected to an on-site waste treatment system to have a percolation test completed within the prior five years, or if percolation has been recertified, within 10 years.
- **Parking:** Authorizes a local agency to require parking of one space per unit, but prohibits a parking requirement if:

¹⁵ There are various exceptions to this prohibition where state building standards and state fire hazard mitigation measures have been applied. The cross-referenced definition reads as follows: *“Within a very high fire hazard severity zone, as determined by the Department of Forestry and Fire Protection pursuant to Section 51178, or within a high or very high fire hazard severity zone as indicated on maps adopted by the Department of Forestry and Fire Protection pursuant to Section 4202 of the Public Resources Code. This subparagraph does not apply to sites excluded from the specified hazard zones by a local agency, pursuant to subdivision (b) of Section 51179, or sites that have adopted fire hazard mitigation measures pursuant to existing building standards or state fire mitigation measures applicable to the development.”*

¹⁶ This limitation is of minor relevance. The economic potential offered by SB 9, far exceeds the impacts of purchasing a desired property and living in for several years, while plans to develop it are prepared. Still given the delay, developers will likely avoid a rental occupied home in a neighborhood and focus on owner-occupied homes, which will accelerate the conversion of a neighborhood to rental properties.

¹⁷ This allows for the full teardown, including the garage.

¹⁸ “Conveyance” in real estate terminology means “sale.”

¹⁹ This allows the entire back half of the property to be used without any open space, other than walking paths. This also will create privacy issues when windows look onto adjoining properties, or other disputes when building remove heritage trees and block views.

- i. The project is within one-half mile of a high-quality transit corridor or a major transit stop, as defined²⁰.
 - ii. There is a car-share vehicle²¹ located within one block of the parcel.
- **Zoning:** Authorizes the proposed development to comply with local “objective” zoning, subdivision, and design standards, but states that such standards cannot have the effect of precluding²² the development of two units. Defines these terms to mean standards that are uniformly verifiable by reference to an external and uniform benchmark or criterion and involve no personal and subjective judgement by a public official. Stipulates that local agencies shall require that any units constructed under this provision that are to be rented shall be for a term longer than 30 days. (Avoids vacation rentals)²³
 - Prohibits a local agency from being required to permit an accessory dwelling unit on parcels where an applicant constructs units in compliance with this section and also subdivides the lot into two separate parcels.²⁴
 - Authorizes a local agency to adopt an ordinance to implement these provisions but stipulates that the adoption of the ordinance shall not be considered a project under the California Environmental Quality Act (CEQA).²⁵

D. Consultant Comments:

- 1) ***Voters Deserve a Voice on Proposed Elimination of Single-Family Zoning:*** It is difficult to conceive of a more aggressive law the Legislature could attempt to pass affecting the nearly seven million California homeowners who have scrimped and saved to acquire and maintain their piece of the California Dream, a single-family home. The Legislature should not leap blindly to the enactment of a sweeping statewide law, without the proper reflection, due diligence, and true public transparency on what such a proposal really means for millions of Californians and the state’s future economy. Enacting such a law without consultation with the voters would be massively reckless. The origins of this bill supposedly are based on recent experiments in Minneapolis and Oregon and fueled by the unfair characterization

²⁰ Corridor with bus service at 15-minute intervals during peak commute hours, and includes existing rail or bus transit stations, ferry terminals served by bus or rail transit, or major transit stops included in regional transportation plan. These distances bear no real correlation with reality. Most residents living in units subject to SB 9 will have cars. Most Californian’s need cars to get to work, take children to school, shop, visit doctor’s offices etc. In most areas of California, outside of urban core areas, transit is insufficient for the variety of most needs. Many also consider transit to be unsafe, and (more recently with COVID) unhealthy.

²¹ This reference in the bill only mentions a “car share vehicle” within one block but does not mention a car share parking space. A clever developer could park a car share vehicle permanently on the property, or on the street in front of it, and argue that no other parking is required.

²² There is no way of fulling knowing what this exemption from applicable local ordinances really means. Such an exemption means that the laws of a community will apply unequally. For instance, a family that wants to add more room to an existing house cannot do so because of a view ordinance, but a developer who buys the property next door is free to use SB 9 to split the lot and put multiple units on the property blocking the views of others in violation of the ordinance. How is this equitable?

²³ Likely difficult to enforce with numerous tenants inhabiting properties.

²⁴ Footnotes 2, 3 and 4 describe ways this can be worked around.

²⁵ Locals are provided little real authority in this measure. No doubt, they will be heavily blamed by residents for the widespread impacts of SB 9 and the absence of any due process for those affected.

that single-family homes and (and, therefore, their owners) are racists, deserves much more public sunshine than is permitted in the COVID-impacted Legislature where public transparency and access has become even more limited. If such a radical proposal has merit, then all affected Californian's deserve an opportunity to fully understand it and weigh in via an advisory ballot measure put to the voters in November 2022.

- 2) ***Governor's Position on SB 9 Will Determine Outcome:*** Governor Newsom holds all the power on this measure. Last year, SB 1120, a virtually identical bill, made it all the way through the Legislature. It passed both the Senate and the Assembly, and only stalled from being taken up on the last night of session because of a midnight floor deadline. SB 9 is authored by the Senate Pro Tem Atkins; it already made it through the Legislature once, as SB 1120, and is anticipated to do so again. That means the fate of this measure come down to a decision by Governor Newsom. While the Governor clearly supports additional housing production, he has opted to do so in a measured way, by increasing accountability for cities and counties to adopt state approved housing element plans and allocating billions in state funding to address homelessness and support affordable housing development. In his most recent budget proposal, he also proposed a special unit at the Department of Housing and Community Development to monitor local housing activities. Moreover, the Governor's own life choices support the referral of the SB 9 proposal for an advisory vote by California voters. When Governor Newsom was inaugurated, he opted to purchase a single-family home on several acres in the suburbs, reported to be the most expensive home ever sold within the region, rather than living in the Governor's mansion in downtown Sacramento. California voters deserve a similar opportunity to decide at the ballot box whether they want to continue to have the opportunity to achieve and maintain benefits of single-family home and associated quality of life for their own families.
- 3) ***Lack of Due Process and Transparency:*** Much is made in the Legislature of the value of public engagement and transparency when local governments make decisions. Local officials must comply with rigorous transparency requirements under the Brown Act. The benefits of CEQA are also strongly defended, to ensure that both the public and decision makers are fully informed and have the opportunity to mitigate environmental impacts. Yet, SB 9 tosses both public transparency and environmental principles aside. Without any due process for those affected, including an opportunity for local hearings or input, or even compliance with CEQA, the Legislature will allow most single-family neighborhoods to become the target of "buy, flip and split" speculators who are free to demolish homes and replace them with units jammed up against four-foot setbacks, with little to no parking, while avoiding compliance with local laws and ordinances that apply to others. It is inequitable to upend single family zoning and destabilize existing neighborhoods without adequate due process to those locally affected.
- 4) ***Inequitable Impacts:*** It is likely that the disruption caused by SB 9 will have inequitable impacts depending on wealth. Flipping homes to duplexes and splitting parcels down to 1,200 square feet are likely to affect middle class and lower income neighborhoods and homeowners more than wealthier individuals. The wealthy, as always, will have more options, including moving to larger estates.

- 5) ***SB 9 Only the Beginning:*** The premise behind SB 9 is that single family zoning must be eliminated. If so, then SB 9 is only the beginning. While SB 9 does not mention new subdivisions, it would be surprising if eliminating new single-family developments is not the next step. It is inconsistent to upend existing single-family neighborhoods, while allowing new subdivisions to be created. The state would also need to reconsider its own single-family home purchase programs and the mortgage interest tax deduction. State housing policies that mention single-family homes in a positive way, would also need to be revised or repealed, such as Section 50007 (HSC) : *The Legislature finds and declares that the large equities that the majority of California residents in most economic strata have now accumulated in single-family homes must be protected and conserved."*
- 6) ***Upends State Housing Element Planning:*** The state already has numerous housing laws in place that ensure that the states' housing needs are incorporated in to local plans, via local zoning. These plans, in turn, must be state approved by the Department of Housing and Community Development. Over 98 percent of cities and counties have obtained such approvals, and the state recently significantly strengthened enforcement provisions to ensure full accountability. Any city and county that has obtained state approval for their local housing plan should be completely exempted from SB 9.
- 7) ***Destabilizing Economic Impacts:*** The purchase of a home is typically an individual's largest investment. Establishing a state policy that permits unlimited and radical developments on adjacent parcels with no public process will destabilize single-family neighborhoods. Those concerned about protecting the value of their investment, and/or seeking to obtain/preserve the traditional benefits of single-family neighborhoods (less noise, traffic, etc.) will opt to move to more rural settings—contributing to additional sprawl—or add to economic and social divisions by increasing demand for living in homeowner's associations where such activities would be prohibited via CC&R's or is the final straw that accelerates a move out of state. Business location and retention decisions will likely be affected as well, since local quality-of-life for those making the decision is often a major factor.

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