

**MINUTES #18  
TIBURON DESIGN REVIEW BOARD  
MEETING OF NOVEMBER 3, 2016**

The meeting was opened at 7:00 p.m. by Chair Kricensky.

**A. ROLL CALL**

Present: Chair Kricensky, Vice Chair Emberson, Boardmembers Chong and Cousins

Absent: Boardmember Tollini

Ex-Officio: Planning Manager Watrous and Associate Planner O'Malley

**B. PUBLIC COMMENTS - None**

**C. STAFF BRIEFING**

Planning Manager Watrous stated that the item for 6 Via Capistrano had been withdrawn. He also noted that no items were scheduled for the November 17, 2016 meeting and it would therefore be canceled.

**D. PUBLIC HEARINGS**

Boardmember Chong recused himself from the following item.

1. **85 EAST VIEW AVENUE:** File Nos. DR2016091, VAR2016026, VAR2016027, VAR2016028, VAR2016029, VAR2016030 & FAE2016009; David and Tandy Ford, Owners; Site Plan and Architectural Review for construction of a new single-family dwelling, with Variances for reduced front and side yard setbacks, excess lot coverage and excess building height, and a Floor Area Exception. The applicant proposes to construct a new four-story, 1,966 square foot house, which would result in a floor area ratio of 99.9%, which is greater than the 35.0% maximum for a lot of this size. The front yard setback would be zero feet in lieu of the minimum 15 feet. The east side setback would be 3 feet and the west side yard setback would be 3 feet, 4 inches, in lieu of the minimum 8 feet. The lot coverage of the house would be 1,231 square feet (62.5%), which is greater than the 30.0% maximum lot coverage permitted in the R-1 zone. The house would be 42 feet, 11 inches tall, in lieu of the maximum building height of 30 feet. Assessor's Parcel No. 060-105-67.

The applicant is requesting Design Review approval for the construction of a new four-story single-family dwelling on property located at 85 East View Avenue. The application was first reviewed at the September 1, 2016 Design Review Board meeting. At that meeting, the owners of the adjacent homes at 83 & 87 East View Avenue raised concerns about potential view and privacy impacts from the proposed house and recommended that the house be pulled up closer to the slope. The Design Review Board shared some of these concerns, but felt that the potential

view impacts would be more substantial for the home at 87 East View Avenue, while the potentially affected views for the residence at 83 East View Avenue were more appropriately characterized as borrowed views across a vacant lot. The Board made suggestions about potential design changes that could address these concerns and continued the application to the November 3, 2016 meeting.

The applicant has now submitted revised plans for the project. The living room on the third floor has been pulled back 4 feet from the rear and widened to match up with the remainder of the building footprint on the east side, 3 feet from the east side property line. A closet has been added on the second floor beneath the widened living room.

The floor area of the proposed house would be 1,966 square feet (99.9%), which is greater than the 35.0% maximum floor area permitted for a lot of this size and 58 square feet larger than the previous house design. A floor area exception is therefore requested. The proposed house would cover 1,231 square feet (62.5%) of the site, 4 square feet greater than the previous design and greater than the 30.0% maximum lot coverage permitted in the R-1 zone. Variances would be required for reduced front and side setbacks, excess lot coverage and excess building height.

David Thompson, architect, reintroduced the project and described changes made to the project design. He said that they moved the living room uphill and increased the width of the third floor on the east and were able to preserve neighbors' views and provide a functional living space. He described the views from the home at 87 East View Avenue and said that its main views were toward Mt. Tamalpais and not toward the bay. He stated that homes on Corinthian Island mostly have views toward the back and not to either side because of adjacent buildings. He felt that the proposed project was not out of scale with the surrounding neighborhood. He characterized the project as a reasonable request on a difficult site with a complicated history. He said that they did their best in this revision to reduce impacts on neighbors' views and to address the Board's concerns.

The public hearing was opened.

Ulrik Binzer said that he still had concerns with the project. He felt that it would have been helpful to move the project back 6 feet instead of 4 feet and the mass of the house would now be closer to his home. He stated that some of the windows shown on other homes were not accurate. He said that he was concerned about looking at a concrete wall outside their kitchen window.

Emily Gannett thanked the applicant for the changes and said that the plans were better than the previous design. She agreed that the living room should have been moved back 6 feet instead of 4 feet. She stated that the images presented were not accurate and that her house has a significant view of Angel Island. She said that she would support the project, but would like to preserve her views and if the house was pushed back a little further she would be happy.

David Ford, applicant, said that he understood that views would be lost, but said that this home would lose the most. He said that moving the living back another 2 feet would significantly impact the size of the room and leave only an 8 foot wide living room. He said that the house would be in the shadow of the home at 83 East View Avenue and would have no view to the northeast or west.

The public hearing was closed.

Vice Chair Emberson stated that she saw the views from both neighboring houses and agreed that the houses on either side of the applicant's property have better views. She said that the house was pushed back and widened as requested by the Board. She agreed that pushing the living room back further and ending up with an 8 foot living room would make it unlivable. She said that she could make the findings for the variances, noting that other homes have similar privileges and that the strict application of the zoning ordinance would result in a difficulty that would make it impossible to build a house there. She said that she could also make the findings for the floor area exception, stating that the house would be in scale with the other houses, and in fact be smaller, and that the house would be compatible with the physical characteristics of the site.

Boardmember Cousins agreed with Vice Chair Emberson. He said that the view from the living room at 87 East View Avenue was a borrowed view, and he did not believe that that window should prevent building on this lot. He appreciated what the applicants did in pulling the project back as far as possible and he supported the application.

Chair Kricensky agreed with the other Boardmembers and stated that the applicants had responded to the Board's direction. He said that when the home 87 East View Avenue is developed, it will have the potential for additional views. He said that the home at 83 East View Avenue has so many windows on that side that it would be impossible to build without impacting views. He believed that the applicant pulled the house back enough and said that he could make the findings for the variances and exception.

**ACTION:** It was M/S (Emberson/Cousins) that the request for 85 East View Avenue is exempt from the California Environmental Quality Act and to approve the request, subject to the attached conditions of approval. Vote: 3-0-1 (Chong recused).

Boardmember Chong returned to the meeting.

2. **6 VIA CAPISTRANO:** File Nos. DR2016105/VAR2016036; Top Tier Group, Inc., Owner; Site Plan and Architecture Review for construction of additions to an existing single-family dwelling, with a Variance for reduced side setback. The project would increase the floor area of the house by 661 square feet to a total of 4,026 square feet and would increase the lot coverage on the site by 108 square feet to a total of 2,281 square feet (11.1%). A portion of one addition would extend to within 10 feet, 1 inch of the west (left) side property line, in lieu of the minimum side setback of 15 feet. Assessor's Parcel No. 038-312-02. **WITHDRAWN**

#### **E. ACTION ITEMS**

3. **150 AVENIDA MIRAFLORES:** File Nos. TREE2016001/TREE2016017; Edwin and Nancy Clock, Owners/Applicants/Appellants; Firuze Hariri, Applicant; Appeal of Planning staff approval of Tree Permit to permit the removal of one (1) Italian Stone Pine Tree and one (1) Cajeput tree, and appeal of Planning staff denial of Tree Permit to permit the after-

the-fact planting of one (1) Italian Stone Pine Tree, one (1) Cajeput Tree, one (1) Cotoneaster Tree and one (1) Privet Tree; Assessor's Parcel Number: 039-111-09.

On April 20, 2016, Planning Division staff approved a tree permit by Firuze Hariri, the owner of the property at 163 Avenida Miraflores to permit the removal of one Italian Stone Pine tree and one Cajeput tree on Town of Tiburon right-of-way adjacent to property located at 150 Avenida Miraflores, owned by Edwin and Nancy Clock. On July 26, 2016, Planning Division staff denied a tree permit filed by the Clocks to permit the after-the-fact planting of one Italian Stone Pine tree, one Cajeput tree, one Cotoneaster tree and one Privet tree on the same property. The Clocks filed timely appeals of both decisions.

On February 3, 1983, the Board of Adjustments and Review approved an application for Site Plan and Architectural Review and a variance for reduced front setback to construct additions to the existing single-family dwelling located at 150 Avenida Miraflores. The Board's decision was appealed to the Town Council by a group of neighboring property owners, including the owners of 163 Avenida Miraflores. On March 15, 1983, the applicants and appellants to that decision reached an agreement to withdraw the appeal that included modifications to the project design approved by the BAR. The agreement included a stipulation that the Clocks would not install or maintain any additional landscaping which would further impair any marine views from the property located at 163 and 165 Avenida Miraflores.

Sometime after 1983, the Clocks planted a series of shrubs and trees within the Town right-of-way. A recent survey shows one Italian Stone Pine tree, one Cajeput tree, one Cotoneaster tree, one Privet tree and one Eucalyptus tree within the Town right-of-way. The Cotoneaster, Privet and Eucalyptus trees are too small (less than a 60 inch circumference and less than 15 feet in height) to meet the definition of "heritage tree" in the Tiburon Tree Ordinance and the Eucalyptus tree is too small to meet the definition of "tree" in that ordinance.

As these trees have grown taller, Ms. Hariri has indicated that the trees have grown up into her views of Richardson Bay and she followed the provisions of the Tiburon View Ordinance and requested that the Clocks trim or remove these trees and subsequently filed a lawsuit against the Clocks to resolve this matter. On September 1, 2016, the Marin Superior Court ruled in favor of the applicant and ordered that all five trees be removed. The appellants have subsequently filed an appeal of this decision to the California Court of Appeals.

Planning Manager Watrous explained the Town's procedure for the two appeals.

Edwin Clock, appellant, said that the trees in question were planted by the original developers and contractors in the late 1970s. He displayed three photographs taken in the first quarter of 2014, in December, 2015, and in February, 2016. He said that they have been trimming the trees annually for the last 20 years and that the third photograph showed how much they lowered the trees in the last year. He said that a tree survey done in January of 2016 showed the elevations of all of the trees and landscaping and showed that all but one of the trees do not meet the Town's definition of a tree because they are shorter than 15 feet or their circumference above ground is less than required.

Nancy Clock, appellant, said that the staff report mentioned two trees but only the Italian stone pine is a tree by the Town's definition, while the other has three separate trunks and is counted as three separate trees. She said that they love their trees and are trying to save them. She said that removing these trees would really substantially affect the value of their property. She read an email from David Gilbert, a real estate professional, which stated that the trees provide an important privacy and headlight barrier to the main living areas of their home. She said that they spoke with neighbors that they could reach, and five neighbors signed a petition stating they like the trees and do not want them cut down.

Mr. Clock said that after this process began in the middle of 2015 they discovered that the title insurance issued for their property revealed there were only four radial easements on their property and that the trees are not located in these easements or encroach on the Town's property. He stated that even if the landscaping was on Town property, Section 15-16 of the Tiburon Municipal Code cannot be used as a reason to remove trees from Town property. He stated that the trial court's judgment from earlier this year was permanently stayed and there can be no enforcement by any agency until the court appeal is resolved.

Mrs. Clock stated they planted all of this vegetation before the requirement to obtain a tree permit went into effect in 1991. She said that they believe that the judgment was flawed and that is why they are appealing that decision. She offered to cut down the Italian stone pine tree and then maintain the heights of the other landscaping at a low enough height so as to not disturb the views. She said that they are also concerned about erosion control, stating that their house is on a steep hill and they had a significant mudslide in 1982. She hoped that the Board would consider their compromise offer as a way to deal with the trees in an amicable way.

Mr. Clock noted that they have an approved landscape plan from their previous 1,000 square foot addition. Mrs. Clock said that they have been trimming the landscaping for many years to preserve neighbors' views.

Barri Kaplan Bonapart, attorney representing Firuze Hariri, said that they agree with the analysis in the staff report and support its findings and recommendations. She stated that there has been three years of litigation, and they have been through a court trial where there was a judgment that the trees are in fact a public nuisance and violate the Town's ordinance, with the judge requiring that the trees be removed. She said that the Clocks have taken extraordinary measures to defend their position, including fabricating evidence. She stated that the building permits indicating that landscaping plans were approved are not in the Town's files and that Mr. Clock had added that notation to the permit.

Ms. Bonapart stated that earlier that day a man knocked on Ms. Hariri's door and gained entry to the home by telling her 11 year old grandson that he needed to come in and take pictures for the meeting. Boardmember Cousins stated that that was him, and Ms. Bonapart said that she was glad to hear that it was a Boardmember. She stated that there have been a series of unusual circumstances and that there have been threats to her, her staff, and Ms. Hariri.

Chair Kricensky asked if all of the plants were planted in 1978. Ms. Bonapart said that they were not and that the court dismissed that argument out of hand.

Vice Chair Emberson asked if the Town owns the property. Planning Manager Watrous said that the illustration displayed by Mr. Clock shows easements on their private property and that the trees exist on Town property beyond the property line.

The public hearing was opened.

Chester Judah said that he is a neighbor of the Clocks and lives across the street from Ms. Hariri. He asked if it is standard practice for Boardmembers to gain access to homes without setting up an appointment and suggested that such appointments needed to be made.

Mr. Clock apologized for the confusion and the complications that appear to be in the record. He stated that his experts indicated that the aerial photograph submitted at trial was photo-shopped and was one of the reasons for their court appeal. He stated that a building permit was issued and the landscaping was approved and that was undisputed. He said that he did not know of any threats that have been made.

Mrs. Clock said that during three years of litigation there have been many statements about falsified evidence and misinformation, and she said that they have not falsified information or forged signatures. She said that they had a very harmonious relationship with Ms. Hariri's parents until they passed away, and that these disagreements began in 2010 when Ms. Hariri moved into the house. She stated that this is a dispute about trees and felt that it was not right to be dragged into three years of litigation. She said that the only person who claims these trees are a public nuisance is Ms. Hariri.

Chair Kricensky asked how they claim the trees are not on Town property when this is the right-of-way. Mr. Clock said that the title report does not say that. Chair Kricensky noted that the line on illustration with the title report is the right-of-way line.

Ms. Bonapart stated that nothing that was said by the Clocks in their rebuttal was true and that she did not need to go into detail.

Vice Chair Emberson asked about the building permit referred to by the appellant. Planning Manager Watrous stated that he had not reviewed that document, but noted that it was unusual for a building permit to include a note about a landscaping inspection. He stated that landscaping is usually reviewed by the Planning Division or the Public Works Department.

Chair Kricensky asked about the 1982 approval, Planning Manager Watrous said that the 1982 decision included a condition of approval requiring that a revised landscaping plan be submitted to the Town. He stated that the landscaping plan is dated after the Town's decision but does not have an approval stamp on the plan.

The public hearing was closed.

Boardmember Chong stated that the root of the issue was the trees blocking views. He said that the question was whether these trees should have been planted there, given that the trees have grown

to their current height. He said that as much as people in Marin love their trees, they also love their views. He said that the trees create view impacts and as the trees are in the Town right-of-way, he leaned toward removing the trees.

Boardmember Cousins said that the trees are in the Town right-of-way and obstruct views, so they should be taken down. He said that he visited Ms. Hariri's home and saw that the trees were fairly small, with the exception of the stone pine. He said that he could not see a reason to overturn the Town's decisions.

Vice Chair Emberson said that she has witnessed the hills of Tiburon, which used to be grassy, become covered with trees. She said that the staff report exhaustively dealt with the grounds for the appeals and she agreed with every one of staff's responses based on what is relevant to the Board's decision. She believed that staff came to correct, valid and fair conclusions. She said that she loves trees, but thought that view blockage is a concern and impacts house values. She said that if a house was proposed in this location, the Board would not allow it. She said that the trees are on the Town's property, the Town made the correct findings, and the trees should be removed. She added that the trees have the potential to become larger, so she was inclined to say that all the trees should be removed.

Chair Kricensky agreed with the other Boardmembers regarding the view blockage, but believed that the pine tree was mostly blocking views. Since the court case had been appealed, he wondered if a decision by DRB would be premature. He said that the other trees have the potential for view blockage.

Boardmember Cousins stated that he did not hear anything that would reverse the findings. Vice Chair Emberson pointed out they should not talk about the court findings, but rather the trees and view blockage. Boardmember Chong stated that the Board would not have approved planting these trees if a request had been made before they were planted.

ACTION: It was M/S (Emberson/Chong) to direct staff to prepare a resolution denying the appeal for tree permit 2016-001. Vote: 4-0.
---

ACTION: It was M/S (Emberson/Chong) to direct staff to prepare a resolution denying the appeal for tree permit 2016-017. Vote: 4-0.
---

4. **22 RACCOON LANE:** File Nos. DR2016119/FAE2016013; Michael and Erin Tollini, Owners; Site Plan and Architecture Review for construction of additions to an existing single-family dwelling, with a Floor Area Exception. The project would convert 1,089 square foot of existing crawlspace into living space on the lower level. The total floor area of 3,523 square feet would be greater than the 2,829 square foot floor area ratio for this site. Assessor's Parcel No. 059-071-35

The applicant is requesting design review approval for construction of additions to an existing single-family dwelling, with a floor area exception, on property located at 22 Raccoon Lane. The property is currently developed with a 2,434 square foot two level, single-family dwelling with an attached 557 square foot two-car garage.

As part of an interior remodel and additions to the existing home, the proposal would convert 1,089 square foot of existing crawlspace into living space on the lower level, which would include a family room, guest room/office, bathroom, and storage. Other proposed improvements would include modified windows and doors on south, east, and west sides of the existing home, and expansion of the lower level deck with new guardrails.

The floor area of the property would be increased by 1,089 square feet to a total of 3,523 square feet, which is 694 square feet greater than the 2,829 square foot floor area ratio for this site. The application has therefore requested a floor area exception. The proposal would result in lot coverage of 2,095 square feet (25.3%), which is below the 35.0% maximum permitted lot coverage in the R-2 zone.

Michael Heckmann, architect, stated that the project was mainly to develop crawl space into living area. He said that the old two-story duplex was converted into a single-family dwelling about seven years ago, and the structure at that time was two stories. He shared photographs of that situation and explained how the renovation improved the appearance from the street. He said that the lower level was enclosed to make the building stable. He said that the request was intended to address the need of the growing family and their need to have a workspace. He stated that the owners contacted most of the neighborhood. He stated that the owners were committed to installing landscaping and are collaborating with two other neighbors. He stated that other properties in the area have floor area exceptions, and felt that this addition would not impact neighbors because it would be mostly subterranean.

The public hearing was opened.

Miles Berger said the neighbors support the project. He said that they spoke with Mr. Tollini about the landscape plan and he requested that a condition of approval require that the landscaping be installed within two months of construction. He stated that the hillside is steep and when it rains, the soil is washed over the curb and out into the street, so groundcover would help prevent that.

Rick Cattell agreed with the addition of the landscaping condition and with everything Mr. Berger said. He added that the construction is very vertical on the Centro West side, and requested some taller plantings to soften that side.

Mr. Heckman said they want to get the landscaping done and he thought that the two month timeframe was fine. He said that planting taller vegetation would mitigate the height of the building.

The public hearing was closed.

Vice Chair Emberson said that she went to the site and thought that it would look better to have windows on that side of the building to break up the stucco. She said that it was easy to support this type of project because the area was underneath the house and not outside the building footprint. She said that she noticed a problem with erosion on the site, and she was inclined to include the condition to complete landscaping within a timely fashion.

Boardmember Chong agreed with staff and on the floor area exception supported the expansion. He said that he was happy to see the plans with a single beam that would clean up the area with the posts. He agreed that landscaping was necessary, including ground cover for erosion and something near the street that would soften the appearance of the building.

Boardmember Cousins said that turning a blank wall into living space would improve the house. He was concerned that more of the deck would be visible and thought that there should be some type of improved finish on the underside of the deck.

Chair Kricensky said that a darker finish on the underside of the deck, along with the landscaping, would make it stand out less. Boardmember Cousins stated the Hillside Design Guidelines were designed to prevent overdeveloped homes and if all homes were built this far over the FAR it would be a problem. Vice Chair Emberson believed that the house would not stand out as much after the construction. Boardmember Chong said that darkening the finish would help, but added that he could not think of a time when the Board had not approved a project like this.

Chair Kricensky said that he supported the project because there no extra excavation was required and it was an obvious place for the addition. He believed that it would enhance the building to have livable space in that area to replace the current blank wall. He said that he could make the findings for the floor area exception and believed that the design worked well.

**ACTION:** It was M/S (Chong/Emberson) that the request for 22 Raccoon Lane is exempt from the California Environmental Quality Act and to approve the request, subject to the attached conditions of approval, and the additional conditions of approval that landscaping shall be installed on the downhill side of the addition to the satisfaction of the Planning Division within 2 months of the date of completion of construction of the project and a landscape plan shall be submitted and approved by the Planning Division prior to issuance of a building permit for this project; and that the underside of the main level deck shall be painted a darker color or a more finished material. Vote: 4-0.

5. **MINUTES:** Consider adoption of minutes of meeting of October 20, 2016

Chair Kricensky noted a typographical error to be corrected on the second sentence of Page 2: “He stated that...”

Vice Chair Emberson noted that the word “said” needed to be added after “Vice Chair Emberson” on the last sentence of Page 3.

**ACTION:** It was M/S (Emberson/Chong) to approve the minutes of the October 20, 2016, meeting, as amended. Vote: 2-0-2 (Chong and Cousins abstained).

## **F. ADJOURNMENT**

The meeting was adjourned at 9:00 p.m.