

**COUNTY OF SAN MATEO
PLANNING AND BUILDING DEPARTMENT**

DATE: August 28, 2019

TO: Planning Commission

FROM: Planning Staff

SUBJECT: EXECUTIVE SUMMARY: Consideration of an After-the-Fact Coastal Development Permit and Variance to legalize the construction of a 6-foot tall solid redwood fence on a vacant parcel adjacent to 263 Nevada Avenue. The project is located in the unincorporated Moss Beach area of San Mateo County. The project is appealable to the California Coastal Commission.

County File Number: PLN 2016-00061 (Gerardo-Lietz)

PROPOSAL

In response to a violation (VIO 2015-00530) for unpermitted construction of a 6-foot tall solid redwood fence located approximately 22.6 feet from the front property line (per survey) on a vacant flag lot along Nevada Avenue, the applicant proposes to legalize the unpermitted fence and modify it by removing boards to create 4-inch gaps. The solid redwood fence constructed by the applicant replaced a 6-foot tall post and single-rope fence located in the same area. The fence is located within the "pole" portion of the flag lot, the area of which is restricted to a maximum 4-foot fence height limit. The parcel fronts Nevada Avenue with the rear portion located along a cliff (The Strand) that has partially eroded into the ocean. The adjacent developed parcel (APN 037-112-140) is under common ownership with the subject parcel.

RECOMMENDATION

That the Planning Commission deny the Coastal Development Permit and Variance, County File Number, PLN 2016-00061, by making the required findings listed in Attachment A.

SUMMARY

The 6-foot tall solid redwood fence is located on the west side of Nevada Avenue in unincorporated Moss Beach, located between Pacific Ocean and Nevada Avenue and was constructed without the required Coastal Development Permit and Variance. The adjacent north parcel is under common ownership and developed with a single-family residence.

The existing solid redwood fence is inconsistent with Local Coastal Program Policies 8.5 (*Location of Development*), 8.12 (*General Regulations*), and 8.13 (*Special Design Guidelines for Coastal Communities*) regarding designing new development so that ocean views are not blocked from public viewpoints such as public roads. Prior to construction of the fence, the public viewpoint from Nevada Avenue to the ocean was almost entirely unobstructed with exception to a simple post and single rope fence. As currently constructed and proposed, the height and style of fencing obstructs the ocean view from the public right-of-way.

Comments from the California Coastal Commission and Midcoast Community Council also identified the same policy inconsistencies. The applicant provided a response to staff regarding the agencies comments which are discussed in detail in the staff report.

As proposed, staff recommends denial of the project due to noncompliance with applicable Local Coastal Program policies.

Environmental Evaluation: Statutory Exemption. CEQA Guidelines Section 15270 (*Projects Which are Disapproved*)

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**COUNTY OF SAN MATEO
PLANNING AND BUILDING DEPARTMENT**

DATE: August 28, 2019

TO: Planning Commission

FROM: Planning Staff

SUBJECT: Consideration of an After-the-Fact Coastal Development Permit and Variance, pursuant to Sections 6328 and 6530 of the San Mateo County Zoning Regulations, to legalize the construction of a 6-foot tall solid redwood fence located at the front of a vacant parcel adjacent to 263 Nevada Avenue. The project is located in the unincorporated Moss Beach area of the San Mateo County. The project is appealable to the California Coastal Commission.

County File Number: PLN 2016-00061 (Gerardo-Lietz)

PROPOSAL

In response to a violation (VIO 2015-00530) for unpermitted construction of a 6-foot tall solid redwood fence located approximately 22.6 feet from the front property line (per survey) on a vacant flag lot along Nevada Avenue, the applicant proposes to legalize the unpermitted fence and modify it by removing boards to create 4-inch gaps. The solid redwood fence constructed by the applicant replaced a 6-foot tall post and single-rope fence located in the same area. The fence is located within the "pole" portion of the flag lot, the area of which is restricted to a maximum 4-foot fence height limit. The parcel fronts Nevada Avenue with the rear portion located along a cliff (The Strand) that has partially eroded into the ocean. The adjacent developed parcel (APN 037-112-140) is under common ownership with the subject parcel.

RECOMMENDATION

That the Planning Commission deny the Coastal Development Permit and Variance, County File Number, PLN 2016-00061, by making the required findings listed in Attachment A.

BACKGROUND

Report Prepared By: Olivia Boo, Project Planner, 650/363-1818

Owner: Nori Gerardo-Lietz Trust

Location: Adjacent to 263 Nevada Avenue, Moss Beach

APN: 037-112-130

Size: 10,243 sq. ft.

Existing Zoning: R-1/S-17/DR/CD (Single-Family Residential/Minimum 5,000 sq. ft. parcel/Design Review/Coastal Development)

General Plan Designation: Medium Density Residential

Local Coastal Plan Designation: Medium Density Residential

Sphere-of-Influence: City of Half Moon Bay

Existing Land Use: Vacant Parcel

Water Supply: Montara Water and Sanitary District

Sewage Disposal: Montara Water and Sanitary District

Flood Zone: Multiple. FEMA flood Zone X (area of minimal flooding) and Zone VE (1% annual chance flood event with additional hazards due to storm-induced velocity wave action). Zone VE is located along the rear portion of the property.

Environmental Evaluation: Statutory Exemption. California Environmental Quality Act (CEQA) Guidelines Section 15270 (*Projects Which are Disapproved*)

Setting: The vacant flag lot parcel is located between two parcels developed with single-family residences (north and south). Eastward of the parcel is existing residential development along Nevada Avenue. Westward is the Pacific Ocean. The rear of the parcel is located along a cliff that has partially eroded into the ocean.

DISCUSSION

A. KEY ISSUES

1. Conformance with the General Plan

Policy 4.2 (*Protection of Shorelines*) discusses protecting and enhancing the visual quality of and from shorelines and bodies of water including lakes, reservoirs, streams, bays, ocean, sloughs and maximize the preservation of significant public ocean views. Policy 4.10 (*Definition of Public View*) defines public reviews as a range of vision from a public road or other public facility.

In 2015, a complaint was received for the construction of the solid wood fence along the front portion of the flag parcel, facing Nevada Avenue. Prior to that time, the view to the ocean from the public right-of-way was unobstructed except for the post and single rope fence. Nevada Avenue is approximately 0.19-mile (1,004 feet) in length with access to the Fitzgerald Marine Reserve at the southern end of the roadway. The majority of parcels along Nevada are developed with single-family residences and, with exception to the public views from dead end streets perpendicular to Nevada Avenue (Lake Street, Beach Street, and Ellendale Street), the subject vacant lot is the only undeveloped parcel that affords the public a view of the ocean from Nevada Avenue. Construction of the 6-foot solid redwood fence obstructs the views from the right-of-way and is inconsistent with Policy 4.2, which aims to maximize the preservation of such views. Further, the proposed modification to the wood fence, to allow 4-inch gaps, is also inconsistent with the policy in that public views are not maximized and remain partially obstructed whereas another style of fencing (e.g., wrought iron fence of 4 feet) would maximize public views to the ocean while discouraging trespassing.

2. Conformance with the Local Coastal Program

Visual Resources Component

Policy 8.5 (*Location of Development*) requires that new development be located on a portion of a parcel where the development is least likely to significantly impact views from public viewpoints and is consistent with all other Local Coastal Program (LCP) requirements, and best preserves the visual and open space qualities of the parcel overall. Policy 8.12 (*General Regulations*) discusses locating and designing new development and landscaping so that ocean views are not blocked from public viewpoints such as public roads and publicly owned lands. Policy 8.13 (*Special Design Guidelines for Coastal Communities*) outlines design guidelines for the Montara-Moss Beach-El Granada-Miramar communities which requires, to the extent feasible, that development is designed to minimize the blocking of views to or along the ocean shoreline from Highway 1 and other public viewpoints between Highway 1 and the sea.

As discussed in Section A.1., above, prior to construction of the solid wood fence, the public viewpoint from Nevada Avenue to the ocean was almost entirely unobstructed with exception of a simple post and single-rope fence. As currently constructed and proposed, the height and style of fencing obstructs the ocean view from the public right-of-way in a manner inconsistent with these policies. Further, other fence options are available that retain the ocean view from the roadway and provide a level of security from trespassers, which may be combined with security cameras on the

landowner's adjacent developed parcel and enforced through local law enforcement avenues.

Shoreline Access Component

Policy 10.1 (*Permit Conditions for Shoreline Access*) and Policy 10.17 (*Lateral Access (Shoreline Destinations) with Coastal Bluffs*) discuss providing shoreline access to the general public as a condition of granting development permits for any public or private development permit between the sea and the nearest road.

The rear of the parcel provides lateral bluff top access to the ocean, though it is not an established access trail or shoreline destination as noted in LCP Table 10.1 (*Assessment of Access Trails and Shoreline Destinations*), nor are there any improvements on the parcel to provide safe access. Local Coastal Program Policy 10.8 (*Appropriate Locations for Shoreline Access*) identifies criteria for the establishment of safe access to shoreline destinations. Criteria include bluffs that are large enough and of a physical character to accommodate safety improvements and which provide room for public use as a vista point. Although unimproved, unauthorized lateral access may be present on the parcel. However, given the continuing erosion at the rear of the parcel, lateral access is better served by the established Fitzgerald Marine Reserve access point located 200 feet south of the parcel.

3. Conformance with the Zoning Regulations

The parcel is zoned R-1/S-17/DR/CD (Single-Family Residential/Minimum 5,000 sq. ft. parcel/Design Review/Coastal Development). Pursuant to Section 6412 of the Zoning Regulations, fences are subject to a maximum height of 4 feet within the front yard and 6 feet along side and rear yards.

Given the current parcel configuration, the fence proposed to be legalized is within the front yard and exceeds the maximum fence height. As outlined in the *Definition of Yards for Various Shapes and Location of Lots* (adopted by the Planning Commission on November 6, 1963 and as amended on June 27, 1973), the front yard of a flag lot parcel includes the flag "pole" and portion of the "flag." The location and height of the fence proposed to be legalized along the flag pole exceeds the maximum height of 4 feet as required by Section 6412 of the Zoning Regulations.

In the urban Midcoast, proposed fences exceeding the maximum height limit within setbacks must apply for a Variance; this has been requested by the applicant.

The purpose of a variance is to allow, under special circumstances, development to vary from the requirements of the Zoning Regulations when strict enforcement would make it difficult to develop a parcel, cause unnecessary hardship to the landowner, or result in inconsistencies with the general purpose of the Zoning Regulations.

In granting a variance, all the following findings must be made. If the Planning Commission is unable to make one or more of the findings, the variance is then denied. Based on the discussion in this report, staff is unable to make Finding Nos. 1, 3 and 5.

- a. *The parcel's location, size, shape, topography and/or other physical conditions vary substantially from those other parcels in the same zoning district or vicinity.*

The parcel is a conforming flag lot with a typical flag lot configuration as mapped. The applicant has expressed a concern for the public's safety due to the coastal erosion occurring at the rear of the parcel, similar to adjacent properties, and the need for taller more substantial fencing than the post and single rope. Though staff understands this concern, preventing trespassing onto this property can be achieved by means other than a 6-foot tall fence (e.g., 4-foot tall fence with supplemental security cameras on the adjacent property under common ownership). Staff is unable to support this finding because the parcel's location, size, shape, and physical condition do not vary substantially from other parcels in the vicinity such that an increase in fence height is warranted.

- b. *Without the variance, the landowner would be denied the rights and privileges that are enjoyed by other landowners in the same zoning district or vicinity.*

Based on Google Earth street view and staff's visit to the site, the majority of properties within the neighborhood are unfenced or have 4-foot tall wooden fences within their front yard. The granting of a 6-foot tall fence would be the exception within the vicinity.

- c. *The variance does not grant the landowner a special privilege which is inconsistent with the restrictions placed on other parcels in the same zoning district or vicinity.*

Fences are allowed accessory structures in residentially zoned districts and the option to apply for an exception (variance) is offered to all landowners equally, thus requesting an additional 2 feet in fence height would not constitute a special privilege. However, the granting of the variance requires other findings that staff is unable to make. If

the variance were approved, this may constitute a special privilege since the project's inconsistency with LCP policies would afford a privilege to this landowner that others proposing similar projects would not be granted.

- d. *The variance authorizes only uses or activities which are permitted by the zoning district.*

Fences are allowed within residentially zoned districts.

- e. *The variance is consistent with the objectives of the General Plan, the Local Coastal Program (LCP) and the Zoning Regulations.*

Staff is unable to recommend that the Commission make this finding due to the inconsistencies with LCP policies relating to visual quality identified in this report.

B. PUBLIC COMMENTS RECEIVED

Staff received comments from the California Coastal Commission, Midcoast Community Council, and the applicant. A summary of the comments followed by staff's response are discussed below.

California Coastal Commission

The Coastal Commission recommends that County staff evaluate construction of the fence for compliance with Local Coastal Program Policies 8.12 and 8.13, and maximum fence height restrictions.

Staff's Response: Please refer to Section A.2 of this report.

Midcoast Community Council (June 8, 2015 letter)

The Midcoast Community Council requests that this After-the-Fact CDP fence permit be modified to include conditions that the fence be lower and more open to restore the view of Fitzgerald from Nevada Avenue. Policies 8.5 and 8.13 appear to be applicable.

Staff's Response: Staff concurs that LCP Policies 8.5, 8.13 as well as 8.12 are applicable. As constructed and proposed to modify the fence (removal of boards to create 4-inch gaps), staff recommends denial of the project due to nonconformance with these policies.

Applicant's Letter

1. *The constructed fence is similar to other fences in the neighborhood. The fence serves to discourage trespassing and to provide privacy and security around the landowner's residence. Any conditions to add spacers or make other design changes that would "open" the fence, as suggested by the Midcoast Community Council in its letter dated June 8, 2015, would not enhance visibility in any material way. [I]f the fence were to be "opened" to a degree that it would meaningfully improve any view, it would wholly undermine the primary safety purpose served by the fence.*

Staff's Response: Staff concurs that this fence is of similar design and material construction albeit at a height greater than other fences found within the vicinity. That said, fencing within the neighborhood, particularly along Nevada Avenue, is associated with existing residential development and mature vegetation as opposed to a vacant lot. This flag lot is unique in that it is the only undeveloped minimally vegetated parcel that affords ocean views from the public right-of-way. Other fence styles can be implemented (e.g., wrought iron) that would both provide for security and visual access to the ocean. Further, fencing can be constructed/ designed so as to meet minimum safety standards.

2. *The prior interpretation by the County and the California Coastal Commission of applicable LCP policies in approving the existing residence provides precedent and that new development and landscaping should be located so that ocean views are not blocked from public viewing points such as public roads.*

Staff's Response: The purpose of the Design Review regulations (as referenced in LCP Policy 8.13 (*Special Design Guidelines for Montara-Moss Beach-El Granada-Miramar*)) is, to the extent feasible, design development to minimize the blocking of views to or along the ocean shoreline from public viewpoints between Highway 1 and the sea. The intent is not to prevent development from occurring but to minimize the impacts of development on coastal resources. In this case, the construction of the solid fence does not minimize impacts to coastal resources, but instead obstructs the view, where, otherwise a fence of another construction type would not.

3. *Every CDP issued for any development between the nearest public road and the sea requires a finding that the development is in conformity with the public access and public recreation policies of the Coastal Act. Visitors wishing to safely access and view the beach may continue less than 200 feet down Nevada Avenue to North Lake Street to access the Fitzgerald Marine Reserve.*

Staff's Response: Staff concurs that adequate public access is available at the southern end of Nevada Avenue and, due to the proximity of the existing access, is not requiring public access through the parcel pursuant to Section 30200 of the Public Resources Code (Coastal Act). That said, all findings must be made for permit approval including the finding that the project *conforms with the plans, policies, requirements and standards of the San Mateo County Local Coastal Program*. To this, staff is unable to make the finding given the project's inconsistency with LCP Visual Resources policies discussed in this report.

4. *We would note that you have suggested in our prior discussions that a fence cannot be constructed on a vacant lot under the R-1 Zoning Regulations, which states that accessory buildings and accessory uses appurtenant to a residential use are permitted by right, provided, however, that such accessory buildings shall not be constructed until the main building shall have been constructed. However, a fence is not a "building" or "use" and we have found nothing in the Code that precludes construction of a fence on a vacant lot. Therefore, it is our understanding that the lot merger is not required to render the fence "accessory" to the residence as staff has suggested, and that the vacant lot, merged or unmerged with the developed lot, could potentially be developed with a taller and wider structure than the fence.*

Staff's Response: Section 6102.1 Definitions of the Zoning Regulations identifies terminology used throughout the regulations and identifies the word "building" to be inclusive of "structure." Chapter 6, R-1 District identifies uses permitted in the One-Family Residential District and includes the following language regarding accessory buildings and accessory uses: *Accessory buildings and accessory uses appurtenant to a residential use, provided, however, that such accessory building shall not be constructed until the main building shall have been constructed.* Given this, a fence is an accessory "building," and must be accompanied by construction of a main building else the fence is not "accessory."

Staff is aware of incidences of public trespassers accessing the property, and general public safety and, in an effort to protect the public and coastal resources, Planning will set aside the parcel merger at this time to allow a fence, but under any circumstances the fence must comply with the visual resources criteria regarding protection of public view points as seen from the roadway. The fence proposed for legalization, even as modified does not preserve the ocean view.

5. *The subject fence is of essentially the same height, material and location as all of the fences of similarly situated properties and we presume the County approved requisite permits for their construction. The home directly across the street of the subject lot had fences installed that were of identical*

construction materials. Unless there is some rational basis for a difference in treatment of our client, the County is required to treat our client and her neighbors equally, i.e., permit construction of the fence with reasonable conditions.

Staff's Response: Staff has reviewed the submitted photos identifying adjacent developed parcels with wood fences of varying heights. In this case, the issue is not that a fence cannot be constructed, but that the existing fence exceeds the height limit imposed by zoning and violates LCP policies. Further, if the applicant had applied for a Coastal Development Permit and Variance prior to construction, the design of the proposed fence would have been required to conform to LCP policies through the permitting process.

C. ENVIRONMENTAL REVIEW

The project is exempt from the California Environmental Quality Act pursuant to CEQA Guidelines Section 15270 (*Projects Which are Disapproved*).

D. REVIEWING AGENCIES

Building Inspection Section
Environmental Health Services
Cal-Fire
California Coastal Commission
Midcoast Community Council

ATTACHMENTS

- A. Recommended Findings for Denial
- B. Vicinity Map
- C. Photos
- D. Public Comments – California Coastal Commission Letter
- E. Public Comments – Midcoast Community Council
- F. Applicant Response Letter, from Applicant's Attorney (dated, December 19, 2016)
- G. Applicant Response Letter, from Applicant's Attorney (dated, June 7, 2016)
- H. Public Comments (emails)

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County of San Mateo
Planning and Building Department

RECOMMENDED FINDINGS FOR DENIAL

Permit or Project File Number: PLN 2016-00061

Hearing Date: August 28, 2019

Prepared By: Olivia Boo
Project Planner

For Adoption By: Planning Commission

RECOMMENDED FINDINGS

For the Environmental Review, Find:

1. That the project is exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15270 (*Projects Which are Disapproved*).

For the Coastal Development Permit, Find:

2. That the project, as described in the application and accompanying materials required by Section 6328.7 and as conditioned in accordance with Section 6328.14, does not conform with the plans, policies, requirements, and standards of the San Mateo County Local Coastal Program. The proposed fence is inconsistent with the protection of coastal resources, namely ocean views from public viewpoints.
3. That where the project is located between the nearest public road and the sea, that the project is in conformity with the public access and public recreation policies of Chapter 3 of the Coastal Act of 1976 (commencing with Section 30200 of the Public Resources Code). Adequate access is provided 200 feet south of the parcel at the Fitzgerald Marine Reserve.
4. That the project does not conform to specific findings required by policies of the San Mateo County Local Coastal Program. The project is inconsistent with the Visual Resources Component policies regarding maximizing public views to the ocean and that other fence options are available which are consistent with these policies.

For the Variance, Find:

5. The parcel's location, size, shape, topography and/or other physical conditions do not vary substantially from those of other parcels in the same zoning district or vicinity. The vacant parcel is of a standard flag lot size and configuration

and physical conditions, bluff erosion, are similar to other parcels along Nevada Avenue.

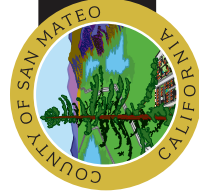
6. Without the variance, the landowner would be denied the rights and privileges that are enjoyed by other landowners in the same zoning district or vicinity. Fences within front yards in vicinity are of similar construction at four feet in height.
7. The variance does grant the landowner a special privilege which is inconsistent with the restrictions placed on other parcels in the same zoning district or vicinity. Granting the variance for this proposal does not maximize public views to the ocean and would constitute a special privilege in that this landowner would be permitted to partially or wholly block public views.
8. The variance authorizes only uses or activities which are permitted by the zoning district. Fences are allowed in residentially zoned districts.
9. The variance is not consistent with the objectives of the General Plan, the Local Coastal Program (LCP) and the Zoning Regulations. The project is inconsistent with the Visual Resources Component policies regarding maximizing public views to the ocean and that other fence options are available which are consistent with these policies.

RECOMMENDED CONDITIONS OF APPROVAL

Current Planning Section

1. Following the end of the appeal period, the existing fence will be removed within 30 calendar days and may be replaced with the original post and rope that existed before.

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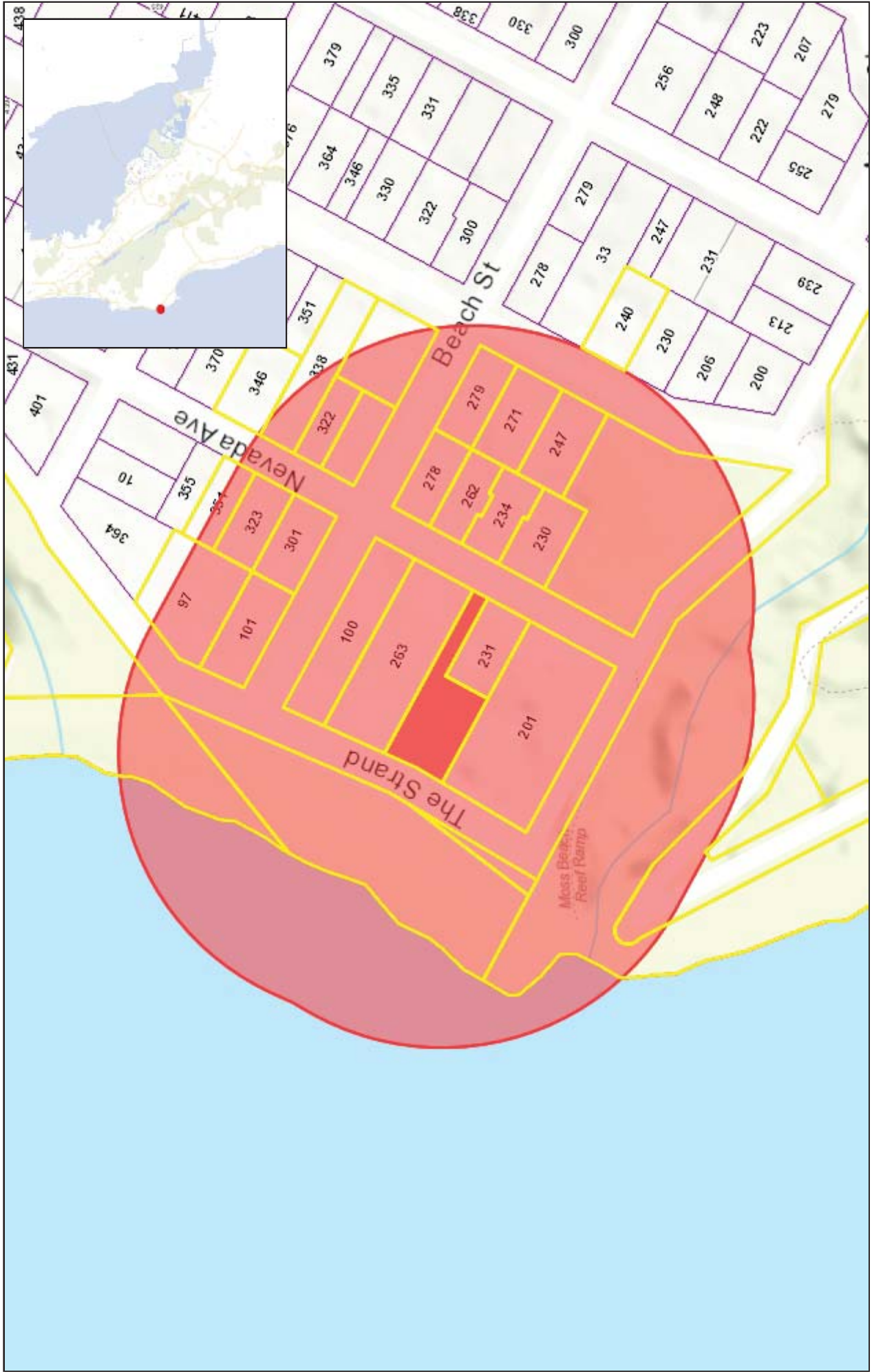
COUNTY OF SAN MATEO - PLANNING AND BUILDING DEPARTMENT

ATTACHMENT B



San Mateo County

San Mateo map



This map is a user generated static output from an Internet mapping site and is for reference only. Data layers that appear on this map may or may not be accurate, current, or otherwise reliable.
THIS MAP IS NOT TO BE USED FOR NAVIGATION



1:2,256

0.07 Miles

0.04

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WGS_1984_Web_Mercator_Auxiliary_Sphere
 © Latitude Geographics Group Ltd.



COUNTY OF SAN MATEO - PLANNING AND BUILDING DEPARTMENT

ATTACHMENT C



Photosimulation prepared by staff of Original wood posts and rope.



Photo taken by staff of existing, illegal 6 foot high wood fence.



Photosimulation prepared by staff, 6 foot high wood fence with four inch gaps (wood planks removed)



Photosimulation prepared by staff , 4 foot wrought iron fence



COUNTY OF SAN MATEO - PLANNING AND BUILDING DEPARTMENT

ATTACHMENT D

CALIFORNIA COASTAL COMMISSION

NORTH CENTRAL COAST DISTRICT OFFICE
45 FREMONT STREET, SUITE 2000
SAN FRANCISCO, CA 94105
PHONE: (415) 904-5260
FAX: (415) 904-5400
WEB: WWW.COASTAL.CA.GOV



June 18, 2016

Olivia Boo
San Mateo County
Planning and Building Department
455 County Center
Redwood City, CA 94063

RE: Project Referral PLN2016-00061 (Crisp) –263 Nevada Avenue, Moss Beach San Mateo County

Dear Ms. Boo,

Thank you for forwarding the project referral (we received on 5/27/2016) and the requested additional project information (received on 6/8/2016) for County Planning File PLN2016-00061. The applicant is seeking a Coastal Development Permit and After-the-Fact authorization of an existing 6-ft. tall, 25-ft. long redwood fence that extends along the front yard of property (APN 037-112-140) located adjacent to 263 Nevada Avenue in Moss Beach. The project also includes the merger of two parcels (APNs 037-112-130 and -140) that are owned by the applicant.


The Local Coastal Program (LCP) provides for the protection of visual resources within the Coastal Zone. The proposed project must be evaluated for consistency with LCP Policies 8.12 and 8.13, as the proposed project site is located within the coastal zone (specifically between the first public road and the sea). LCP Policy 8.13(a)(5) outlines special design guidelines for coastal communities, which includes Moss Beach, and requires that development, to the extent feasible, be designed to minimize the blocking of views to or along the ocean shoreline from coastal roads. Similarly, LCP Policy 8.12(b) requires new development be designed so that ocean views are not blocked from public roads. The sights from the public road at this location include a picturesque view of the ocean. We recommend the County evaluate potential impacts the fence may have on ocean views from public roads; and consider alternative fence designs which would provide for spacing on the upper portion of the fence or between the slats which would at least allow for partial view of the ocean from Nevada Avenue. The County must additionally review the fence's consistency with LCP Section 6565.20(F) that requires site fencing should complement and enhance the design of the home while harmonizing with the overall character of the neighborhood.

Should the merger of the two parcels (which would create one parcel over 20,000 square feet) not be approved, the fence shall comply with the height limits specified in LCP Section 6412(a), which restricts the height to four (4) feet.

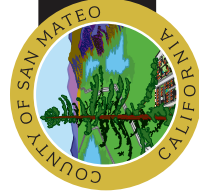
Olivia Boo, San Mateo County
PLN2016-00061 (Crisp)
June 18, 2016

Please feel free to contact me regarding these comments. You can reach me by telephone at 415-904-5260; in writing at the address listed in the letter head; or via e-mail at rananda@coastal.ca.gov.

Sincerely,

A handwritten signature in cursive script that reads "Renée T. Ananda". The signature is written in black ink and is positioned above the printed name and title.

Renée T. Ananda
Coastal Program Analyst



COUNTY OF SAN MATEO - PLANNING AND BUILDING DEPARTMENT

ATTACHMENT E

Midcoast Community Council

*An elected Advisory Council to the San Mateo County Board of Supervisors
representing Montara, Moss Beach, El Granada, Princeton, and Miramar*
P.O. Box 248, Moss Beach, CA 94038-0248 - www.MidcoastCommunityCouncil.org

Chris Johnson **Lisa Ketcham** **Dan Haggerty** **Erin Deinzer** **Laura Stein** **Dave Olson** **Claire Toutant**
Chair Vice-Chair Secretary Treasurer

Date: June 8, 2016

To: Olivia Boo, Project Planner
Cc: Renée Ananda, CCC Coastal Program Analyst
From: Midcoast Community Council/ Chris Johnson, Chair

Subject: PLN2016-00061, After the fact CDP for fence, Nevada Ave, Moss Beach

The Midcoast Community Council requests that this after the fact CDP fence permit be modified to include conditions that the fence be lower and more open to restore the views of Fitzgerald from Nevada Ave (see attached photos).

The 6 foot high, 25 foot long fence built from solid planking is located between the ocean and the nearest road (Nevada Ave.). The fence blocks highly valued views of the Fitzgerald Reserve and the ocean. LCP Sections 8.5 and 8.13 appear to be applicable. These coastal views are highly valued by all who pass by in a neighborhood that draws many coastal visitors to the Fitzgerald Marine Reserve.

There are many visitors to this area due to the Reserve, and over the years, many have stopped to look at the views that this fence now blocks.

While normally, a fence set this far from the property line could be built to a height of 6 feet, the views that are blocked by this fence should not allow for a fence higher than 4 feet, and the fence should be substantially more open so that the views are not blocked.

As precedent, please see PLN2015-00445 where a fence permit was modified because it blocked views. The fence at 263 Nevada blocks views even more than the fence on Magellan Ave. (PLN2015-00445).

MIDCOAST COMMUNITY COUNCIL
s/Chris Johnson, Chair



View from the edge of Nevada Ave., looking across the fence



View of ocean from top of fence



COUNTY OF SAN MATEO - PLANNING AND BUILDING DEPARTMENT

ATTACHMENT F

December 19, 2016

Client-Matter: 62446.030

VIA EMAIL OBOO@SMCGOV.ORG

Olivia Boo, Planner III
County of San Mateo
Planning and Building Department
455 County Center, 2nd Floor
Redwood City, CA 94063

Re: 263 Nevada Avenue, Moss Beach; Application for Lot Merger and Coastal
Development Permit for Fence

Dear Ms. Boo:

Pursuant to our discussions, we are submitting for your consideration the discussion below, which identifies each of the County regulations and policies that apply to our pending application for a Coastal Development Permit and to provide support for our position that the fence at issue is in full compliance with the County's zoning regulations and Local Coastal Program Policies.

To provide context, our client owns the residence located at 263 Nevada Avenue in Moss Beach (APN 037-112-140) and the adjacent vacant lot (APN 037-112-130). San Mateo County Code Compliance issued a Notice of Violation dated January 5, 2016 (County File No. VIO2015-00530) in connection with the construction of a wooden fence on the vacant parcel, and advised that because the property is located within the Coastal Development District, Section 6328.4 of the County Zoning Regulations requires the County's issuance of a Coastal Development Permit for any "development" including the construction of the fence.

On February 16, 2016, we submitted on behalf of our client an application for a Coastal Development Permit for the existing wooden fence and a lot merger to merge both lots into one large, developed parcel. The County issued a letter dated May 25, 2016 determining that our application was complete. As we have discussed at length in the last several months, the fence is similar to other fences in the neighborhood and serves to discourage trespassing, ensure the safety of trespassers along the bluff, and provide privacy and security around the area of our client's existing single-family home. One of the purposes of the proposed voluntary lot merger is to ensure that the commonly-owned vacant lot is incorporated as part of our client's single family residential property and not separately conveyed or sought to be developed.

Olivia Boo, Planner III
December 19, 2016
Page 2

1. The Fence Conforms to the County Zoning Regulations.

The subject property is zoned One-Family Residential District/S-17 Midcoast Combining District/Design Review District/Coastal Development Overlay District (R-1/S-17/DR/CD).

(a) Height and Setback Requirements. The fence conforms to the development standards for height limit and setback requirement as established in the County zoning ordinance. The applicable zoning regulations allow a six-foot fence in a side yard provided it does not extend into the required 20-foot front yard. (SMCC 6412(b), 6300.2.) Here, the fence is less than six feet tall, as confirmed by the attached surveyor's certification, and allows a 23-foot front yard setback, as confirmed by the site plan submitted with our application. With the proposed lot merger, the fence would occupy the side yard of the resulting lot.

(i) Design Review Standards. The applicable Design Review District regulations are intended to ensure that development is "complementary with neighboring houses, the neighborhood character of each Midcoast community, and the surrounding natural setting." (SMCC 6565.20(A).) Specific to fencing, the Design Review District standards state "[s]ite fencing should complement and enhance the design of the home, while harmonizing with the overall character of the neighborhood...Fences...shall comply with the height limits specified in Section 6412 of the Zoning Regulations. (SMCC 6565.20(F)3.) Particularly relevant here, the Design Review District Regulations expressly acknowledge that "[p]rivacy is one of the keys to a property owner's enjoyment of their property and their quality of life." (SMCC 6565.20(C)2.a.) Moreover, "private views are not protected by existing regulations." (SMCC 6565.20(C)2.b.)

As illustrated in the attached photographs/screenshots¹, the subject fence is of essentially the same height, material, and relative location as all of the fences in the immediate area, along the west side of Nevada Avenue. All of the fences in the area are approximately six feet tall, made of wood, and allow for partial views of the ocean from Nevada Avenue. The subject fence is harmonized with the overall character of the neighborhood and immediate area, and preserves the view of the ocean, which can still be seen over the fence.

Any conditions to add spacers or make other design changes that would "open" the fence, as suggested by the Midcoastal Community Council in its letter dated June 8, 2015, would not enhance visibility in any material way primarily due to the depth of the front yard set back (and distance to any public vantage point on Nevada Avenue), and if the fence were to be "opened" to a degree that it would meaningfully improve any view, it would wholly undermine the primary safety purpose served by the fence. Children and animals would likely be able to squeeze through the spacers, if the fence were opened in a way to provide meaningful views to the ocean.

¹ The attached screenshots were taken from www.googlemaps.com for consistency, except for the subject fence due to the fact that the website is not updated to show the fence.

Olivia Boo, Planner III
December 19, 2016
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2. The Fence Conforms to Local Coastal Program Policies

Based on staff feedback to date, it is our understanding that the County's primary concern relating to the fence is that it blocks an ocean view from Nevada Avenue, a public road. As discussed below, the fence is in full compliance with LCP Policies designed to protect public viewing points. In this regard, the County's and California Coastal Commission's reasoning and prior interpretation of the applicable LCP policies in approving the existing residence provides precedent. The existing, expanded residence as approved by the County in 2011, and approved by the Coastal Commission on appeal in 2012, included the addition of 2,783 square feet to the then existing 2,912 square foot single family residence. Three appeals were filed on the grounds that the project did not conform to LCP policies regarding hazards, visual resources/community character, and biological resources. Based in part, on a determination that the project as a whole was consistent with LCP's requirements regarding visual resources and community character, the Commission approved the project with conditions at a de novo hearing on December 12, 2012.

(a) Protection of Visual Resources. General regulations contained in the Local Coastal Program provide that new development and landscaping should be located so that ocean views are not blocked from public viewing points such as public roads and publicly-owned lands. (LCP Sec. 8.12.b.) Additionally, special design guidelines for coastal communities provide, "[t]o the extent feasible, design development to minimize the blocking of views to or along the ocean shoreline...from...public viewpoints between Highway 1 and the sea. Public viewpoints include coastal roads..." (LCP, Sec. 8.13(a)(5).) Additional policies applicable to visual resources include Visual Resources Policy 8.4, which requires that bluff top development is generally set back from the edge of the bluff sufficiently far to ensure it is not visually obtrusive when viewed from the shoreline. Section 8.13(a)(4) states that structures should be in scale with the character of their setting and blend rather than dominate or distract from the overall view of the urban landscape.

In the staff report to the Commission dated November 29, 2012, staff recommended a determination that the project as approved by the County presented a substantial issue and summarized the applicable LCP policies and design standards relating to Visual Resources as follows: "Taken together, these policies and standards require visual resources to be protected and development along the bluff in San Mateo County, including Moss Beach, to be appropriately sited and designed to minimize impacts to public viewpoints." The staff report goes on to describe visibility of the project from two viewpoints: (1) the beach below the bluff and (2) the public access trail at Fitzgerald Marine Reserve, "as seen from the trail looking toward the area of existing urban development."

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December 19, 2016
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Staff's reasoning that the project was consistent with LCP policies was summarized as follows:

[T]he existing residence is already visible from the trail, and the proposed addition does not extend any farther seaward that the existing residence does, nor does it block views to the beach or shoreline in any way. In addition, the resulting residence would only be seven feet taller than the existing residence. Therefore, the proposed project will be visible in the context of other existing residential development located along the bluff top, upcoast from the Reserve, and its impacts on coastal views would be minimal...In addition, as previously discussed, the proposed project is consistent with the LCP's development standards including required height, setbacks, floor area and maximum parcel coverage, and it is located along an urbanized section of the coast adjacent to existing residential development.

The same reasoning applies to the subject fence, which is essentially a minor appurtenance to the residence, and far less significant in terms of size, design, location, and visibility than a home developed at 263 Nevada Avenue. Indeed, the fence is not visible either from the beach or from the bluff. In addition, historically, the vacant lot upon which the fence is constructed was overgrown with trees and shrubbery that completely obstructed any view from Nevada Street. The prior owner cut down protected plants and trees without a permit in a manner that now allows for a partial view of the ocean. Even with the fence as constructed, there is still a partial view of the ocean.

(b) Public Access. Every CDP issued for any development between the nearest public road and the sea requires a finding that the development is in conformity with the public access and public recreation policies of the Coastal Act. As explained in the County's November 2011 staff report finding compliance with LCP Policies and recommending the approval for the existing single family home, there is existing vertical access arteries already provided by North Lake Street, located at the southern end of Nevada Avenue and by Beach Street located north of the site. "North Lake Street serves as the access point for Fitzgerald Marine Reserve, while Beach Street terminates at the bluff's end westward that provides an area where unobstructed views of the beach below and the Pacific Ocean are available." (Staff Report (A-2-SMC-11-044) Nov. 17, 2011, Exh. 3, p. 6 of 86.)

As a related matter, the absence of any fence would give rise to significant public safety concerns as visitors would be able to walk across our client's property, thereby trespassing, and directly access the blufftop area without any safeguards against this coastal hazard. Visitors wishing to safely access and view the beach may continue less than 200 feet down Nevada Avenue to North Lake Street. The Fitzgerald Marine Reserve includes a public parking lot and

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several trails, including a trail that leads upcoast to the beach that is located below the property. Indeed, it is important to note that the Midcoastal Community Council itself did not object to the construction of a fence; their concern focused on the aesthetics of the fence and whether the current views of the ocean could be enhanced.

3. The Lot Merger May Be Required to Allow the Fence at a Height of Six Feet

Pursuant to Government Code Section 66499.20 3/4, Section 7123 of the County Code authorizes the Planning Director to approve voluntary mergers upon request of the legal owner of contiguous parcels. The County's criteria for review and action on a lot merger application state that the Planning Director "shall approve the application for merger if the merger of parcels will not result in a greater density of development than that which is currently allowed by the County Zoning Regulations." In approving the request for merger, the Planning Director may impose reasonable conditions, and once the conditions of the merger have been satisfied, a Notice of Merger shall be recorded with the County Recorder. The filing of the Notice of Merger constitutes legal merger of the affected parcels.

We would note that you have suggested in our prior discussions that a fence cannot be constructed on a vacant lot under the R-1 zoning regulations, which state that accessory buildings and accessory uses appurtenant to a residential use are permitted by right, provided, however, that such accessory buildings shall not be constructed until the main building shall have been constructed. (SMCC Section 6161(e).) However, a fence is not a "building" or "use" and we have found nothing in the Code that precludes construction of a fence on a vacant lot. (See SMCC Section 6412 [Regulations Applicable to Fences, Walls and Hedges].) Therefore, it is our understanding that the lot merger is not required to render the fence "accessory" to the residence as staff has suggested, and that the vacant lot, merged or unmerged with the developed lot, could potentially be developed with a taller and wider structure than the fence. Indeed, the County had already issued a conditional approval of a development permit in the letter dated March 17, 2011 (PLN 2010-00302) for the lot that has been appealed to the California Coastal Commission.

As a practical matter, if County staff is not inclined to recommend approval of the fence as constructed, our client will not likely proceed with the request for a voluntary merger of the lots and thereby maintain the right to separately convey the vacant parcel or seek approvals for development of the lot to the extent feasible. As mentioned above, the County previously approved a conditional development permit for the lot, and the applicant reserves the right to pursue a new development. Accordingly, we reserve the right to withdraw our application for a lot merger until such time as staff has made a recommendation on our Coastal Development Permit application.

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December 19, 2016
Page 6

4. Equal Protection Requires that Similarly Situated Property Be Treated the Same

As described herein, the subject fence is of essentially the same height, material and location as all of the fences of similarly situated properties and we presume the County approved requisite permits for their construction. As the submitted pictures illustrate, the home directly across the street of the subject lot had fences installed that were of identical construction materials. Unless there is some rational basis for a difference in treatment of our client, the County is required to treat our client and her neighbors equally, i.e., permit construction of the fence with reasonable conditions. (*Genesis Environmental Services v. San Joaquin Valley Unified Air Pollution Control District* (2003) 113 Cal.App.4th 597, 605 [An equal protection claim arises when a property owner is treated differently from other similarly situated persons, the difference in treatment is intentional, and there is no rational basis for the difference in treatment].)

Moreover, selective enforcement or unequal treatment by a governmental agency in the execution of a statute or ordinance may also give rise to an equal protection claim. (*See Squaw Valley Development Company v. Goldberg* (9th Cir. 2004) 375 F.3d 936, 945 [water board staff selectively impermissibly enforced water quality standards against ski resort as pretext for personal vendetta against resort owner].) We are informed that the County has either approved or not required permits for the fences of surrounding, similarly situated property owners, including the fence across the street from our client's property, erected after our client's fence. Additionally, there are a number of fences in the immediate area, including the fence for the residence on the south end of the subject lot, that exceed six feet. We have not, however, investigated or confirmed this information and would appreciate any relevant information you might provide.

We appreciate the opportunity to address the concerns raised by the County in connection with our application and a resolution of the Notice of Violation. We look forward to hearing from you.

Sincerely,



Robia Crisp

KXL
Attachments

Cc: Nori Gerardo-Lietz (via email nglietz@aretenow.com)
Kristina Lawson, Esq.

FENCES ALONG NEVADA AVENUE FACING THE COAST

Subject Fence between 231 and 263 Nevada Avenue



Fence between 263 Nevada Avenue and 100 Beach Street.



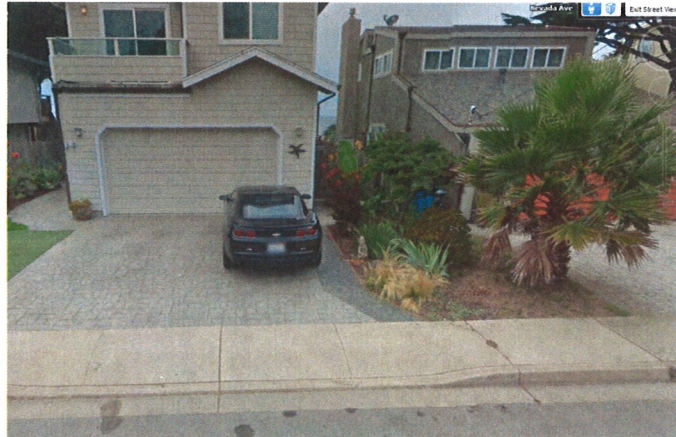
Fence between 301 and 323 Nevada Avenue



Fence between and 323 and 351 Nevada Avenue



Fence between 351 and 355 Nevada Avenue



316227138.4



LEA & BRAZE ENGINEERING, INC.
 CIVIL ENGINEERS | LAND SURVEYORS

Main Office:
 2495 Industrial Pkwy. West
 Hayward, CA 94545
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Building Department – San Mateo County
 455 County Center, 2nd Floor
 Redwood City, Ca 94063
 Phn-650-363-4000
 Fax-650-363-4849

July 8, 2016

Sacramento Region:
 3017 Douglas Blvd., Ste. 300
 Roseville, CA 95661
 Ph: 916.966.1338
 Fx: 916.797.7363

Subject: **263 Nevada Avenue**
Moss Beach, California (Unincorporated San Mateo County)
APN: 037-112-110 & 120
 Job No. 2160281 SU

To the Department:

Please consider this letter my certification that we have field verified the elevations of the top of constructed fence along Nevada Avenue and found it to be less than 6' above natural grade. Our field data is shown tabulated below.

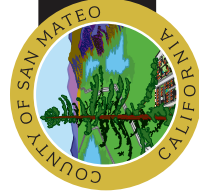
<u>Description</u>	<u>Top of fence elevation</u>	<u>Lowest Natural grade below</u>	<u>Max Fence Height</u>
South Property line	48.35'	42.50'	5.85'
Fence Step	49.01'	43.03'	5.98'
Fence Step	49.73'	44.07'	5.66'
North Property line	50.37'	44.41'	5.96'

Please call me with any questions.

Sincerely,



Alexander A. Abaya
 Land Surveyor



COUNTY OF SAN MATEO - PLANNING AND BUILDING DEPARTMENT

ATTACHMENT G

June 7, 2016

Client-Matter: 62446-030

VIA EMAIL MIDCOASTCOMMUNITYCOUNCIL@GMAIL.COM

Midcoast Community Council
PO Box 248
Moss Beach, CA 94038

Re: Midcoast Community Council Meeting June 8, 2016; Draft MCC Comments on
263 Nevada Avenue, Moss Beach; Application for Lot Merger and Coastal
Development Permit for Fence

Dear Chair Johnson and Members of the Midcoast Community Council:

This firm represents Nori Gerardo-Lietz, the owner of the residence located at 263 Nevada Avenue in Moss Beach (APN 037-112-140), and the adjacent vacant lot (APN 037-112-130). We filed on behalf of our client, an application for a Coastal Development Permit for a six-foot high, 25 foot-long wooden fence, which is located on the vacant parcel. The fence is intended to delineate the property owned by our client as one large, developed parcel and we have filed a related application for a lot merger to merge the vacant parcel with the adjacent parcel developed with the single family home. The fence also serves to discourage trespassing and provide privacy around the area of our client's existing single-family home.

We have reviewed the agenda that was posted on your website on Saturday, June 4, 2016, for your meeting scheduled for June 8, 2016, which includes consideration of proposed draft comments and a Council request that the fence permit be modified to include conditions that the fence be lower and more open to restore the views of Fitzgerald Reserve from Nevada Avenue. As set forth below, we do not believe the reasons provided in the draft memo from the Council to Olivia Boo warrant a reduction in the height of the fence or a condition that the fence be more open.

First, while the Council accurately comments that there are many visitors to this area due to the Fitzgerald Reserve and that over the years, many have stopped to look at the views by walking up to the fence so they can see over it, to the significant ocean views, please keep in mind that the property on which the fence is located is private, residential property. The fence serves to discourage the exact type of trespassing the draft comments describe and to provide privacy around the area of our client's existing single-family home. Historically, the property was overgrown with vegetation and trees measuring up to 15-20 feet until a previous property

Midcoast Advisory Council

June 7, 2016

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owner cut down all of the growth on the land. In other words, in past years, there has been no view whatsoever.

Further, there is a material safety issue that the fence serves to address. By virtue of the prior owner unlawfully removing the then-existing vegetation, tourists to the nearby Preserve now park in front of and routinely wander out onto the property. There is an approximately 60 foot cliff over the beach area. There is no fence on the bluff. The owner is extremely concerned that someone might inadvertently go out to the edge and fall off the cliff, which would most certainly result in serious injury or even death. An open, unimpeded property overlooking the ocean is most certainly an attractive nuisance that could present potential liability to the current owner. Prior "No Trespassing" signs were routinely ignored. A fence is the logical solution to prevent such potential injury.

Second, as the Council comments acknowledge, a fence set this far from the property line may be built to a height of six feet. The Council further comments that nonetheless, the views that are blocked by the fence should mandate a fence no higher than four feet, and that the fence should be substantially more open so that the views are not blocked. We would point out that absent the related lot merger that our client has requested from the County, the vacant parcel upon which the fence is located could be developed for another single-family residence, which would be significantly taller and impede visibility significantly more than the fence at issue. The fence is intended to delineate the property owned by our client as one large, private, developed parcel and discourage further development and trespassing on this site.

Third, the Council references, as precedent, a fence permit that was denied for a fence on Magellan Avenue in Miramar because it blocked views (PLN2015-00445), and states that the fence at 263 Nevada blocks views even more than the fence on Magellan Avenue. In fact, the fence at issue in that case was located on land in a mostly undeveloped area visible from Highway 1. In addition to the fact that the land was located within a scenic corridor, the fence at issue was a perimeter fence designed to fully enclose a parcel and its main purpose was to prevent cars from parking on the property. Here the fence is located in an already developed residential area that is not within a view corridor and is substantially shorter in length, less intrusive and less visible than the fence considered in PLN2015-00445.

Significantly, the proposed fence complies with the San Mateo County General Plan, Local Coastal Plan, and County Zoning Regulations. In terms of visual resources, the fence is set back from the bluff edge and is not visible when viewed from the shoreline. The design of the fence is compatible with the architecture of the residence owned by our client and blends with the surrounding neighborhood. The fence is designed and situated to be in visual harmony with the natural vegetation and is proportionate to the existing structures in the neighborhood, all of which have similar fences. The fence is situated to ensure adequate space for light and air to

Midcoast Advisory Council
June 7, 2016
Page 3

itself and the adjacent property. The fence will not affect public access to the beach or any nearby trails. The fence also conforms to Section 6412 of the Zoning Regulations, which provides that fences not exceeding six feet in height may occupy any side yard area, provided that they do not extend into any required front yard. The fence is located approximately 23 feet from the front property line, exceeding the required front setback requirement.

Existing view access, including access from Nevada Avenue are already impeded by the existing residence and neighboring residence to the south. Again, absent the fence, there will be no demarcation that the parcel is privately owned and absent the related merger that our client has requested, the parcel could be developed for another single-family residence. As a related matter, the photographs of the fence that are included with the draft comments are misleading in that they appear to have been taken from a vantage point located on our client's private property rather than from the street.

Finally, while we appreciate your consideration of our comments, neither our office nor the property owner was provided with any notice of your June 8, 2016, meeting despite the fact that our contact information is readily available from the County Planning Department and in our application materials. Instead, our client was alerted by a neighbor over the weekend that the meeting is to take place. Given that our client's substantial property right is at stake, we believe the Council's failure to provide any notice potentially violates our client's procedural due process right to notice and an opportunity to be heard.

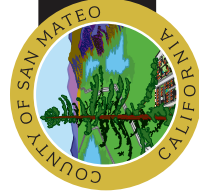
For the reasons set forth above, we respectfully ask that you decline to forward the request for modification of the permit as set forth in your draft comments dated June 8, 2016. Please do not hesitate to contact me should you have any questions.

Sincerely,



Robia Crisp

Cc: Olivia Boo, County Planner III (via email oboo@smcgov.org)
Kristina Lawson, Esq.
Chris Johnson (via email chrisjohnson.mcc@yahoo.com)
Lisa Ketcham (via email midcoastlisa@gmail.com)
Dan Haggerty (via email midcoastdan@gmail.com)
Erin Deinzer (via email erin.deinzer@gmail.com)
Dave Olson (via email daveolsonmcc@gmail.com)
Laura Stein (via email laura.stein@comcast.net)
Claire Toutant (via email midcoast.claire@gmail.com)



COUNTY OF SAN MATEO - PLANNING AND BUILDING DEPARTMENT

ATTACHMENT H

Olivia Boo

Subject: FW: Referral for 263 Nevada Ave, Moss Beach, PLN2016-00061, After The Fact fence

>
> -----Original Message-----
> From: Casey Schaufler [mailto:casey@schaufler-ca.com]
> Sent: Monday, May 30, 2016 12:21 PM
> To: Olivia Boo <oboo@smcgov.org>
> Cc: Ann Forrister <ann@annforrister.com>; Renee.Ananda@coastal.ca.gov; daveolsonmcc@gmail.com; Dave Holbrook <dholbrook@smcgov.org>; Lisa Aozasa <laozasa@smcgov.org>
> Subject: RE: Referral for 263 Nevada Ave, Moss Beach, PLN2016-00061, After The Fact fence

>
>
>
> Ms. Boo

>
> We have learned from the Midcoast Community Council that PLN2016-00061 has been filed with the planning department. As the original complainants we expected to hear about this from San Mateo county planning. Also, residents within 300 feet of the property, it is our understanding that we should have been notified of this proposed development. We are quite concerned about the process with which this development has been carried out to date, and were surprised to learn about the plans from the MCC, rather than by what we understand to be the normal mandated mechanism.

>
> There are substantial issues with the plans submitted. The primary issue is that the "fencing plan" makes no reference at all to the height of the fence. There is no elevation of the view from the street. The two drawings that depict structures depict structures prior to a 2,400 square foot addition. We can but assume that the plans submitted were submitted in error, and that revised plans, including the height and visual impact of the fence and the building currently on the site are forthcoming. Obviously, the county cannot approve the plans based on the obsolete and incomplete information provided.

>
> We are concerned that it appears there will be no opportunity for the process mandated public feedback on this project. We understand that after-the-fact permits on completed construction offer certain complications. We are not suggesting that a fence is completely inappropriate at this location, but we do object to the blockage of a coastal view corridor from Nevada Ave. The Coastal Plan requires public review of project like this, and we strongly object to the notion that an after-the-fact permit request might be considered exempt from that important part of the process.

>
> Thank you

>
> Casey Schaufler & Ann Forrister
> 234 Nevada Ave
> Moss Beach

>
>

Olivia Boo

From: MCC Dave Olson <daveolsonmcc@gmail.com>
Sent: Friday, June 03, 2016 8:08 AM
To: Olivia Boo
Cc: Renee Ananda
Subject: Re: Referral for 263 Nevada Ave, Moss Beach, PLN2016-00061, After The Fact fence

Olivia Boo <oboo@smcgov.org> wrote:

> Dear Mr. Olson,
> Thank you for your comment on this project. I suspect it may be difficult to require the fence be lowered to 4 ft. given as you mentioned, it is located in a place where it is permitted to be 6 ft. tall. But I think also, this will have to be worked out and addressed during the process of this permit.

Given that it's in a viewshed, and that there are precedents for not allowing views to be blocked, it doesn't seem like it should be too hard. The Coastal Act and rules related to it should take precedence over the normal fence regulations.

I've also asked that this issue be added to the agenda for the next regular meeting of the MCC, so we'll likely be sending a letter from the council on this fence issue.

Thanks,

> -----Original Message-----

> From: MCC Dave Olson [mailto:daveolsonmcc@gmail.com]
> Sent: Sunday, May 29, 2016 12:00 PM
> To: Olivia Boo <oboo@smcgov.org>
> Cc: Renee Ananda <Renee.Ananda@coastal.ca.gov>
> Subject: Re: Referral for 263 Nevada Ave, Moss Beach, PLN2016-00061,
> After The Fact fence

>

> Olivia Boo <oboo@smcgov.org> wrote:

>

>>> Dear MidCoastCommunity Council

>>>

>>> Attached please find plans for the above reference project.

>

> Olivia, I suggest that this after the fact CDP fence permit be modified to include conditions that the fence be lower and more open to restore the views of Fitzgerald from Nevada Ave.

>

> The fence that was built without a permit is 5-6 feet high, and is solid planking. As such, it substantially blocks the views of the Fitzgerald Reserve and the ocean from Nevada Ave.

>

> On at least 3 occasions, I have seen visitors to the area walk up to the fence so they could see over it, to the quite significant ocean views.

>

> There are many visitors to this area due to the Reserve, and over the years, many have stopped to look at the views that this fence now blocks.

- >
- > While normally, a fence set this far from the property line could be built to a height of 6 feet, the views that are blocked by this fence should not allow for a fence higher than 4 feet, and the fence should be substantially more open.
- >
- > As precedent, please see PLN2015-00445 where a fence permit was denied because it blocked views.
- >
- > The fence at 263 Nevada blocks views even more than the fence on Magellan Ave.
- >
- > Also, while not relevant to the fence, the house plans shown on pages 2 and 3 of the plans you sent us for PLN2016-00061 are for the house that previously existed at 263 Nevada. That house has since been rebuilt as a substantially larger and higher house. That should at least be noted in the plans.
- >
- > The height of the fence should also be noted on the plans.

Dave Olson
Midcoast Community Council
650.387.3618 (cell)
daveolsonmcc@gmail.com
<http://www.midcoastcommunitycouncil.org/>

Attachment H