

BELVEDERE PLANNING COMMISSION

MINUTES

REGULAR MEETING

May 21, 2019 6:30 P.M.

A. CALL TO ORDER OF THE REGULAR MEETING

Chair Jim Lynch called the regular meeting to order at 6:30 p.m. in the Council Chambers. Commissioners present: Jim Lynch, Peter Mark, Larry Stoehr, Nena Hart and Pat Carapiet. Absent: Marsha Lasky and Claire Slaymaker. Staff present: Director of Planning and Building Irene Borba, Associate Planner Rebecca Markwick, City Attorney Emily Longfellow, and Planning and Building Technician Nancy Miller.

B. OPEN FORUM

No one wished to speak.

C. REPORTS

There were no reports.

D. CONSENT CALENDAR

Vice Chair Peter Mark requested the Item 4 be removed from the consent calendar for a question.

MOTION: To approve the Consent Calendar Items 1, 2, 3 and 5 as agendized below.

MOVED BY: Peter Mark, seconded by Pat Carapiet

VOTE: AYES: Jim Lynch, Peter Mark, Pat Carapiet, Larry Stoehr, Nena Hart
 NOES: None
 ABSTAIN: Jim Lynch, (Item 2)
 RECUSED: None
 ABSENT: Marsha Lasky, Claire Slaymaker

1. Draft **Minutes of the April 16, 2019** regular meeting of the Planning Commission.
2. Demolition Permit, Design Review and Use Permit to demolish and replace an existing fixed pier, gangway, and floating dock located on City-owned tide lots adjacent to the property located at **270 Beach Road**. The project was approved at the July 18, 2017 Planning Commission hearing and has now since expired. There are no changes proposed to the previously approved project. Property Owners: James and Hollie Moore Haynes. Applicant: Tim Murison, Clausen Engineers.
3. Extension of time for Design Review, Exception to Total Floor Area & Variance approval for a new single family residence and attached garage located at **218 Bayview Avenue**. Property Owner Gary Liu. Applicant: Michael Lin.
5. Consideration of Resolution recommending City Council amendment of Municipal Code Title 20, Design Review Ordinance, clarifying **Retroactive Design Review** enforcement.

E. PUBLIC HEARINGS

Item 4 was removed from the Consent Calendar for discussion.

4. Consideration of Resolution recommending City Council amendment of Municipal Code Title 20, Section 20.04.035 "**Construction Time Limit Ordinance**" removing maximum Construction Time Limit penalty cap.

City Attorney Emily Longfellow presented a summary of the proposed amendments.

Vice Chair Mark asked whether there are guidelines incorporated relative to the amount of the fines so it would not be considered legally excessive.

Ms. Longfellow replied that those guidelines are not specified to allow for staff to consider situations individually. The amendments are drafted to be consistent with case law and how other jurisdictions handle this process.

Discussion was held regarding the frequency of fines having reached the current cap.

Director Borba reported that there have been only a few projects that incurred substantial penalties. A current project is over the Construction Time Limit but it would remain subject to the old Code.

Open public hearing.

Wendy Miller, 226 Bella Vista Avenue, spoke in support of the amendments. She stated that the current cap is not a large enough incentive to builders to complete projects timely. She asked that the recommendation to the City Council might include current projects that have gone on for very long periods.

Close public hearing.

Commissioners discussed that the proposed amendments would be a good step in improving the incentives for builders to shorten the duration of their construction projects.

MOTION: To recommend the proposed amendments to Belvedere Municipal Code Section 20.04.035 to the City Council.

MOVED BY: Peter Mark, seconded by Nena Hart

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

6. Demolition, Design Review, Exception to Total Floor Area, and Revocable License for the property located at **6 West Shore Road**. The project proposes to demolish the existing house and attached garage and construction of a new 5,254 square foot house, attached garage, pool house and extensive landscaping through the property. The project requires an Exception to Total Floor Area to exceed the allowable floor area. A Revocable License is required for proposed improvements in the city right-of-way. Applicant: Reba Jones, Butler Armsden Architects; Property Owner: The Holland-Jaeger Family Trust.

Associate Planner Rebecca Markwick presented the staff report. A slide show accompanied her remarks.¹ Late mail received was distributed to the Commissioners and added to the record.

Open public hearing.

Lewis Butler, project architect, recapped the changes to the project. A slide show accompanied his remarks.² Frederick Moller, landscape architect, discussed the proposed landscaping elements.

¹ The slide show presentation is archived with the record of this meeting.

² The applicant's slide show presentation is archived with the record of this meeting.

Commissioners asked whether the applicants would agree to conditions to pull back the front eave out of the setback, the removal of hanging tree lights and reduction of outdoor lighting, whether tree plantings could be planted earlier in areas where there would be no construction impacts, and to required neighbor signoff on the hedge that would be 8 feet tall. They discussed with the applicant whether the windows facing the uphill neighbor could be reduced in size or use obscured glazing. The Commissioners agreed with the applicant that they might consider modified interior lighting to mitigate lighting impacts. Mr. Butler stated they would consider treatment of the upstairs bathroom windows facing the deck.

Close public hearing.

Commissioner Stoehr asked whether the Commission is precluded from consideration of an Exception to Total Floor Area under the Code in a demolition situation. (BMC 19.52.120 (2) A and (2) B.

Ms. Longfellow replied that an Exception to Total Floor Area can and has been considered in the past for demolition/new house projects. The findings must be made to approve that request.

Vice-Chair Mark observed that the Code describes a situation where an Exception expands a non-conformity, which would not be the case here.

Chair Lynch asked whether it is true that, while generally disfavored, there are findings that may be made to allow for the approval of an Exception to Total Floor Area.

Ms. Longfellow responded that is correct.

Commissioners agreed that the new project proposal is much improved over the prior applications inclusive of the conditions as discussed with the applicant. Findings for the Exception included that the pool house is the main source of the additional floor area and the element is well situated. The size of the lot also mitigates this request and the house is within the setbacks.

MOTION: To adopt the Resolution granting No Historical or Tribal Cultural Resources per CEQA at **6 West Shore Road.**

MOVED BY: Peter Mark, seconded by Nena Hart

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

MOTION: To adopt the Resolution granting Demolition of the existing single family dwelling and detached garage at **6 West Shore Road.**

MOVED BY: Peter Mark, seconded by Nena Hart

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

MOTION: To adopt Resolution, as conditioned, granting Design Review approval for a new single family dwelling and attached car port at the property located at 6 West Shore Road.

MOVED BY: Peter Mark, seconded by Nena Hart

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

MOTION: To adopt Resolution granting Exception to Total Floor Area to allow 5,254 SF where 4,850 SF is permitted for the property located at 6 West Shore Road.

MOVED BY: Peter Mark, seconded by Nena Hart

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

MOTION: To recommend to the City Council approval of a Revocable License for improvements located in the public street right-of-way at 6 West Shore Road.

MOVED BY: Peter Mark, seconded by Nena Hart

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

- 7. Design Review, Exception to Total Floor Area and Variance applications for a second story addition for the property located at 80 Lagoon Road. The project requires an Exception to Total Floor Area to exceed the allowable floor area and a Variance to encroach into the side yard setback. Applicant: Michael Heckmann; Property Owner: Magda L. Wesslund Trust.

Associate Planner Markwick presented the staff report. It has been determined an additional Variance for Lot Coverage will be required. If the Commission decides to approve the project the added Variance would have to be re-noticed and come back on a future agenda.

Open public hearing.

Michael Heckmann, project architect, described the purpose of the requested expansion of the building is to accommodate a new blended family with many children and grandchildren who will visit frequently. He described conversations with neighbors to discuss concerns and his willingness to consider minor modifications to the request in that regard.

Vice-Chair Mark asked about an alternative floor plan and stair location that might reduce the size of the upper story.

Mr. Heckmann replied that was studied but there would be insufficient headroom to change that configuration.

Nan Allen, 82 Lagoon Road, stated that the project is too large, would negatively affect her sunlight, and an approval of the project would set a bad precedent.

Betsy Houston, 78 Lagoon Road, stated her mother is Meta Kirshbaum, owner of the home. They are opposed to the proposed home, the privacy and sunlight impacts from the expansion. In addition there are very concerned about the noise and impacts from the construction of this project. The granting of Variances and Exceptions already are negatively affecting the neighborhood in conjunction with the increase in FEMA homes.

Mr. Heckmann requested some direction to bring back recommended modifications to a future meeting.

Close public hearing.

Commissioner Hart recalled the 2011 approvals for a major project at this property which stretched the limits at the time. She would not support additional expansion of the home as she cannot make the findings.

Director Borba clarified that there are no Resolutions of approval before the Commission tonight. If so directed, those can be brought back to a future meeting for approval.

Commissioner Stoehr agrees with the applicant that massing of homes on the Lagoon towards the street is preferred. He likes the design but the lot is not large enough to support a home of this size. The Lagoon zone is already high density and Variances and Exceptions should be disfavored. He stated he would vote to deny this project.

Ms. Longfellow stated that the Commission may take action to continue, approve or to deny the project. If denied direction would be given to staff to return with Resolutions of denial at a future meeting.

Commissioner Carapiet agrees with Commissioner Stoehr that massing of homes towards the street is preferred in the Lagoon zone. Although the design is very nice, the additional square footage is difficult to support and the associated Variance related to a second story. Some of the larger homes in the zone may have been built prior to current codes for Lot Coverage.

Vice-Chair Mark stated that he concurs with his fellow Commissioners. The only way a project that has been maximized to date like this is if it significantly respected the side yard setbacks there might be something to be considered. The design is beautiful but it is just too much for this lot.

Chair Lynch stated that he would like to come up with some way to help applicants get their project approved, but for this one, he has little to suggest. This house is beautiful now, the proposed design is beautiful but not right for this lot.

Vice-Chair Mark stated that this house is probably not FEMA compliant and would require such an evaluation and review as well.

Commissioners discussed their options for an action. They decided to offer a continuance for the project to allow the applicant to change or withdraw the application with the maximum flexibility.

MOTION: To recommend a continuance for the project at **80 Lagoon Road**.

MOVED BY: Peter Mark, seconded by Pat Carapiet

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

8. Appeal of a Design Review Exception regarding the property located at 405 San Rafael Avenue for fencing and minor landscaping improvements. Appellant: Ciara McKenna & John Ryan (**5 Laurel Avenue**). Property Owners: Daniel Oakley & Nancy Dapprich (**405 San Rafael Ave**).

Director Borba presented the staff report.

Commissioners asked for clarification of what has been approved as to the landscape plan.

Ms. Borba replied that the approval was for a cleanup of the property, tree work and replanting with day lilies, and to reestablish the grass area in the rear. They planned for the potential regrowth of some of the pruned trees and shrubs as well.

Commissioners asked whether they may condition their action tonight if they deny the appeal.

Ms. Longfellow replied that the Design Review comes before the Commission *de novo*. Conditions may be added as a part of making the findings for Design Review.

Open public hearing.

Ciara McKenna, 5 Laurel Avenue, explained why she and her husband have appealed the Design Review Exception for 405 San Rafael Avenue. She enumerated a number of requests for modifications to agreed fencing and landscaping.

Daniel Oakley, 405 San Rafael Avenue, requested that their approval be upheld so they may proceed to complete their project.

Chair Lynch asked whether any trees greater than 12" diameter have been removed that were not previously approved.

Mr. Oakley stated they have not.

Peter Brooks, arborist, described tree and hedge work on the property. The plan was to reduce the overgrown pittosporum back to the ground level to allow for them to regrow. A permitted Oak was removed. A large part of a fallen Plum tree was removed at the SW corner of the property. Some Japanese maples were hard pruned to reduce the scale.

Chair Lynch asked the status of the Plum tree that was to be preserved.

Mr. Brooks replied that tree was not in condition to be preserved. A replacement tree may be needed. They planned that the tree be cut just above the soil for a faster regrowth which would be faster than new trees could grow. There is existing old irrigation system present that probably needs work.

Mr. Oakley stated that the irrigation will be repaired and/or added drip systems are proposed.

Vice-Chair Mark asked for staff to comment as to good neighbor law regarding the existing grape stake fence partially on the property of 5 Laurel Ave as well as being on the property at 405 San Rafael Avenue?

Ms. Longfellow replied that generally if a fence is on your property or the shared property line then ownership and control of the fence is yours. There can be some variations if the fence is not exactly on the plane of the shared property line. This is a very fact specific analysis and not before the Commission tonight.

Close public hearing.

Chair Lynch asked staff to clarify what are the potential actions tonight.

Ms. Longfellow replied that the possible actions that may be taken tonight are: to deny the appeal, or to uphold the appeal with *de novo* review of the Design Review application, and to possibly add conditions of approval, such as requesting a final landscape plan or other conditions.

Chair Lynch stated he was involved in the process of working with staff and the applicants and neighbors on a draft agreement, which was not accepted. The goals of the applicants were for yard cleanup and a new single fence. The approved alternative proposal is what is before us tonight. Concerns as to the extent of vegetation removal while maximizing the screening were considerations and were conditions of the current DRE approvals for tonight's consideration additional screening should be added to the conditions of approval because of the extent of the vegetation removals that have now occurred. He stated he would uphold the appeal and approve Design Review with added conditions that there be more landscaping provided and directed towards enhancing the screening along the fence between the two properties and the section running to the north.

Commissioner Hart stated that she believes the amount of vegetation and tree removals is extreme and she does not believe that the trees, even if they come back, will never be attractive again. The Commission cannot impose any requirements on a neighbor to provide privacy for another property. One provides one's own privacy. The existing house at 405 San Rafael Avenue needs to replace irrigation, and add more plantings. The owners should build the 4-foot fence that they like as proposed. The neighbors on the right have planted a pittosporum hedge and possibly the owners of 5 Laurel Avenue might do something similar, except there are some obstacles presented by their own existing hardscape surrounding the pool. They can come up with something to protect the safety of the pool and to screen from view of passersby and neighbors.

Vice Chair Mark agrees with Commissioner Hart. The proposed plantings in the Design Review Exception are insufficient and he would uphold the appeal and approve the original Design Review with conditions. The four foot fence can be approved on the property. The neighbors at 5 Laurel Avenue also have a right to build their own 6 foot fence. A double fence scenario may be the probable outcome here, one fence on each property.

Commissioner Carapiet has visited the site and the neighbor's home. She agrees that the owner of 405 San Rafael Avenue has a right to build their fence. The proposed landscaping plan is not sufficient. A new landscaping plan is needed, including provision for irrigation and plantings as a condition of approval of the Design Review.

Commissioner Stoehr visited both properties. He agrees that the owner should be allowed to install their own fence and the neighbor is free to request to install their own 6 foot fence. The extent of removal of the plantings on 405 San Rafael Avenue was too great. The approval should include a new landscaping plan that softens the property and screens the home.

Chair Lynch stated that the original DRE included conditions to retain sufficient vegetation. Because of the extent of vegetation removals the new approval should be conditioned to add approval of a final landscape and irrigation plan.

Ms. Longfellow outlined language for the proposed motion

MOTION: To grant the appeal and approve Design Review as originally approved and conditioned that prior to construction of the fence a final landscaping plan shall be submitted for review/approval by the Planning Commission Chair and the Director of Planning & Building. Said plan shall include but not be limited to additional screening plantings and an irrigation system to support the new landscaping.

MOVED BY: Peter Mark, seconded by Larry Stoehr

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

Commissioner Stoehr recused himself because he lives within 500 feet of the subject property for Item 9 (**17 Cove Road**). He retired from the meeting.

9. Design Review, Exception to Total Floor Area and a Variance application to demolish the existing garage and replace it with a new garage and second story addition for the property located at **17 Cove Road**. The project requires an Exception to Total Floor Area to exceed the allowable floor area and a Variance to encroach into the rear yard setback. Applicant: Michael Heckmann; Property Owner: Rettke Family Trust. (Commissioner Stoehr Recused).

Associate Planner Markwick presented the staff report. A slide show accompanied her remarks.³

Michael Heckmann, project architect, presented the project to the Commission. They are aware of the communications from the neighbors, although they have not met with them nor have they had the opportunity to visit their property. They believe privacy would not be an issue with this project but they would be happy to discuss options with the Commission.

Commissioner Carapiet asked whether clerestory windows on bedrooms might be considered as an alternative to the current design.

Mr. Heckmann replied they might consider different glazing on some of the bedroom windows, although they would prefer clear glass.

Open public hearing.

No one wished to speak.

Close public hearing.

Vice Chair Mark visited the property and the neighborhood. This is a good solution for development on a small property without any impacts from the additional square-footage which is well nestled into the property. He can make the findings for the new Variance as a replacement for a prior one. The bedrooms which would typically have window coverings. He would prefer to leave the windows as proposed. He can support the project.

Commissioner Carapiet stated that the need for the Exception to Total Floor Area would continue to exacerbate the issue of the trend for increasing density in the Lagoon zone. She could make the findings for Design Review and the Variance for the rear setback, if this was not requiring an Exception.

Commissioner Hart stated that the design fits in well with the existing home. The impact of the addition of the rear garage is so minimal as to have no impacts on the neighbors. She does not favor frosted windows in bedrooms. She can support Design Review, Exception to Total Floor Area and the Variance.

³ The slide show presentation has been archived with the record of the meeting.

Chair Lynch studied the plans, visited the site and studied the surrounding neighborhood. He shares Commissioner Carapiet's concerns with requests for an Exception to Total Floor Area. The building itself does not impact surrounding properties because of the commercial area behind, and adjacent taller apartment buildings. Those neighbors may not always be there but here he can make the findings for the Exception to Total Floor Area as well as the other requests.

MOTION: Adopt the Resolution granting Design Review for a new garage, addition and interior remodel at **17 Cove Road**.

MOVED BY: Peter Mark, seconded by Nena Hart

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

MOTION: Adopt a Resolution granting Exception to Total Floor Area to allow 3,618 SF where 3,300 SF is permitted and 3,066 SF exists at **17 Cove Road**.

MOVED BY: Peter Mark, seconded by Nena Hart

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

MOTION: Adopt a Resolution granting a Variance to allow the garage to encroach into the rear yard setback at **17 Cove Road**.

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

10. Design Review, Exception to Total Floor Area and Variance applications for an addition on the first floor and a new second story addition for the property located at **28 Windward Road**. The project requires an Exception to Total Floor Area to exceed the allowable floor area and a Variance to exceed the allowable lot coverage. Applicant: Jeff Plonowski Architecture; Property Owner: Gloria and Fernando Cruz. (Continue to a future meeting at the request of the applicant)

MOTION: To continue the item for **28 Windward Road** to a future meeting.

MOVED BY: Peter Mark, seconded by Pat Carapiet

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


ADJOURNMENT

The meeting was adjourned at 9:45 pm.


PASSED AND APPROVED at a regular meeting of the Belvedere Planning Commission on June 18, 2019 by the following vote:

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

APPROVED: _____


Peter Mark, Planning Commission Vice-Chair

ATTEST: _____


Alison Foulis, City Clerk