

BELVEDERE PLANNING COMMISSION

MINUTES

REGULAR MEETING

JANUARY 15, 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, Nena Hart, Marsha Lasky, Larry Stoehr, Pat Carapiet (arrived at 7:20 pm). Absent: Peter Mark, Claire Slaymaker. Staff present: Director of Planning and Building Irene Borba, Associate Planner Rebecca Markwick, Building Official Brian Van Son, City Attorney Emily Longfellow, and Secretary Nancy Miller.

B. OPEN FORUM

No one wished to speak.

C. REPORTS

There were no reports.

D. CONSENT CALENDAR

Chair Lynch stated Item 3 will be considered later when Commissioner Carapiet arrives.

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

MOVED BY: Marsha Lasky, seconded by Nena Hart

VOTE: AYES: Jim Lynch, Marsha Lasky, Nena Hart, Larry Stoehr
 ABSTAIN: Larry Stoehr (Item 1), Jim Lynch (Item 1)
 ABSENT: Peter Mark, Claire Slaymaker, Pat Carapiet

1. Draft **Minutes of the December 18, 2018** regular meeting of the Planning Commission.
2. Extension of previous approvals granted for Design Review and Variance for reduced Front Yard Setback, for construction of a new 4,604 square-foot residence with attached garage and other improvements on an undeveloped lot located at **46 Cliff Road**. Property Owner(s): Deepwater Bay LLP/Mr. Leonard Chan; Applicant: Miles Berger (Miles Berger Architect).
4. Extension of previous approvals granted for Design Review to allow the construction of a driveway deck addition, new driveway gate, renovations to the front entry way of the home, the addition of two new exterior stair cases, new lighting, and a new entry gate and fence located at **82 Alcatraz Avenue**. Property Owner(s): Irene Meyers; Applicant: Dan Hunter (Hunter Architects).

Chair Lynch stated that Items 5 and 7 will be heard before Items 4 and 6.

E. PUBLIC HEARINGS

5. Design Review and Demolition for construction of a new garage and addition at **17 Leeward Road**. The project consists of a rebuilding the garage in the same location, filling in the area between the garage and house, extending the master bedroom into the backyard and expanding the existing living room into the court yard. Applicant: Brock Wagstaff; Property Owner: Judy Webb.

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

Brock Wagstaff, architect, responded to questions from Commissioners. He stated they would consider a reduction of the number of lights at the rear of the property.

Open public hearing.

Ken Johnson, 16 Leeward Road, is the adjacent neighbor. He has reviewed and supports the project.

Close public hearing.

Commissioner Hart can approve the project with a condition for final lighting plan to be reviewed and approved by the Chair and Planning staff.

Commissioner Stoehr stated he has studied the reports and plans. He can make the findings for the requested applications with the condition for lighting review as discussed by Commissioner Hart.

Commissioner Lasky stated the appraisal issue should not be in the purview of the Planning Commission but rather a Building department consideration. She can make the findings for the project.

Chair Lynch stated he concurs with his fellow Commissioners. Having visited the property he can make the findings for all three motions, as conditioned.

MOTION: To adopt the Resolution granting Demolition for the garage located at **17 Leeward Road.**

MOVED BY: Nena Hart, seconded by Marsha Lasky

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

MOTION: To adopt the Resolution granting No Historical or Tribal Cultural Resource per CEQA at **17 Leeward Road.**

MOVED BY: Nena Hart, seconded by Marsha Lasky

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

MOTION: To adopt the Resolution granting Design Review, as conditioned, at **17 Leeward Road.**

MOVED BY: Nena Hart, seconded by Marsha Lasky

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

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

7. Design Review approval to remove an existing Italian stone pine tree (45" in diameter) which grows near the edge of the Belvedere Lagoon in the rear yard of the property located at **3A Peninsula Road**. Property Owner: Belvedere Land Company Partnership; Applicant: Holly Khouw.

Director of Planning and Building Borba presented the staff report. A slide show accompanied her remarks.² A late submittal of an Arborist report from the applicant was provided at places for the Commissioners. Ms. Borba stated that if the Commissioners choose they could condition an approval with a requirement for an alternative replacement tree.

Open public hearing.

Holly Khouw, representative for the owners, Belvedere Land Company, stated that the Stone Pine tree is a blight to the property, making it difficult to rent. Many birds use the tree and there are a lot of bird droppings underneath as a result.

Commissioners asked whether the conditions described in the applicant's arborist report which was dated in May, still exist.

Ms. Khouw replied she is not certain of the details since she only recently began working for the management company.

Open public hearing.

No one wished to speak.

Close public hearing.

Commissioner Lasky agreed with the staff report. This is an important tree which provides privacy and screening at the Lagoon frontage. It is a very old tree and any replacement tree would take a long time to fill in. Birds will be in any tree that is there.

Commissioner Stoehr stated he also serves on the BLPOA. The planter box that serves as a bulkhead at the edge of the property was rebuilt recently. The debris from the Stone Pine is not good for the Lagoon and the BLPOA would prefer a replacement tree that would be set back from the Lagoon. A new tree would be lower and provide more screening than the Stone Pine. The tree should be removed.

Commissioner Hart stated she visited the site and agrees with Commissioner Lasky. If the roots are pruned up to 30% it might cause fewer issues. There are very few trees in this area and she cannot make findings for its removal.

Chair Lynch stated he visited the site and concurs with Commissioners Lasky and Hart. Since the planter box has been repaired now the tree should not be removed. He stated that he cannot make findings for the removal. It is a beautiful tree.

Commissioner Stoehr stated that because the tree roots are right up to the edge of the planter box it should be replaced with a tree farther back. It is causing damage.

MOTION: To adopt the Resolution denying Design Review approval to remove the Stone Pine tree at 3A Peninsula Road.

MOVED BY: Marsha Lasky, seconded by Nena Hart

² The slide show presentation is archived with the record of the meeting.

VOTE: AYES: Jim Lynch, Marsha Lasky, Nena Hart
 NOES: Larry Stoehr
 ABSENT: Peter Mark, Claire Slaymaker, Pat Carapiet

After a short break the Commission reconvened.

Commissioner Carapiet joined the meeting.

Chair Lynch stated he is recused on Item 3 (**419 Belvedere Avenue**).

D. CONSENT CALENDAR (reopened by acting Chair Marsha Lasky)

MOTION: To approve the Consent Calendar for Item 3 as agendized below.

MOVED BY: Larry Stoehr, seconded by Pat Carapiet

VOTE: AYES: Marsha Lasky, Nena Hart, Larry Stoehr, Pat Carapiet
 RECUSED: Jim Lynch
 ABSENT: Peter Mark, Claire Slaymaker

3. Demolition permit for the demolition of an existing garage located at **419 Belvedere Avenue**. Applicant: Mark Swanson (Jamba Construction). Property Owners: 401 Belvedere Corp and Peggy Homestead Trust. (*Commissioner Lynch recused*)

E. PUBLIC HEARINGS

Commissioner Hart stated she must recuse herself from Item 6 (**121 Belvedere Avenue**) because she owns property within 500 feet of the subject property. She departed from the meeting.

6. Consideration of Design Review, Conditional Use Permit and Mitigated Negative Declaration for waterfront improvements at **121 Belvedere Avenue**. The proposal includes a new private pier, dock, boat lift, platform lift, access stairs, hillavator and above grade deck. The pier is approximately 876 square feet of new area over the water and is proposed in the middle of 121 Belvedere's shore line frontage and avoids natural rock outcroppings. Applicant: LAK Associates, Sean Kennings; Property Owners: David McClosky. (*Commissioners Mark, Slaymaker and Hart recused*)

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

Chair Lynch asked staff whether there is anything in the Belvedere Municipal Code or any other authority of which you are aware of that preserves for one property a view right in a situation like this.

City Attorney Longfellow replied that in this case where a view is arguably being obstructed by a pier there are no codes or ordinances that would preserve that view. We do have a view protection ordinance that involves landscaping, which does not apply here.

David McClosky, property owner and applicant, 121 Belvedere Avenue, stated he has had meetings with multiple neighbors, mostly with Mr. Piazza regarding concerns and requested changes. These have been friendly and neighborly discussions. Mr. Piazza's lawyer has stated that there are working agreements in place, but this is not true and Mr. Piazza's lawyer does not speak for him. Mr. McCloskey has done a lot of studies to consider and be sensitive to both neighbors as well as addressing guidance received at the October meeting of the Planning Commission. We believe we have complied with all the recommendations, having moved the

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

hillavator another 3 feet and have reconfigured the plan for the dock. Mr. McCloskey acknowledged the unique situation that being on the water is different from landscaping or trees. Mr. McCloskey stated he understands and has compassion for Mr. Piazza who would like the pier curving to the north, but that might be unfair to the other neighbor. There are no specific guidelines or master plan for this kind of use in this area and the general idea is that a pier would be roughly in the extension of the property lines into the water. Mr. McCloskey has tried to be as thorough as possible in studying the project. There are a lot of other sensitivities such as eel grass to be considered. Mr. McCloskey moved the location from the previous Planning Commission hearing based on feedback from the Commission. Mr. McCloskey stated that he tried to work with Mr. Piazza who is the only real objector. He stated that he has support from many neighbors.

Commissioner Stoehr asked why is the dock at the end so large? Are the kayaks stacked or side by side?

Mr. McClosky stated they looked at the sizes of other docks in Belvedere. Most of these are quite a bit larger than ours. The proposed dock is about as small as it can be to provide for his needs but to still be comfortable. Perhaps it could be reduced. The 2 kayaks are vertically stacked.

Sean Kennings, LAK Associates, stated that Clausen Engineers provided the standard dock design with the pier head a reasonable size for use and utility. The kayaks would be on a hand-cranked ladder lift as seen in the application materials.

Commissioner Carapiet asked whether the kayak lift be relocated to another location where it has less bulk farther back down the gangway out of the sight of Mr. Piazza?

Mr. Kennings replied that he understands the lift is meant to be on the landward side and perpendicular to the shoreline. This is the current proposal and specification from Clausen Engineers.

Mr. McClosky stated that this has been some of the ongoing discussion with Mr. Piazza.

Commissioner Carapiet asked why is this dock so much higher than what would be allowed on West Shore?

Mr. Kennings stated the elevation is relative to the level of MLLW which may vary on the different shorelines and it is not higher in elevation than those in other locations.

Chair Lynch asked what is the status of the discussions with Mr. Piazza? Has there been any agreement or are there still points of disagreement?

Mr. McClosky replied there is no agreement. They have had 4-5 in person meetings plus texts, emails and phone calls. Mr. McClosky's concern is that the goal posts keep moving and different concerns come up each time. They understand that ideally Mr. Piazza does not want a pier here at all so that he can have what he calls his protected view corridor around his house. Although Mr. McCloskey respects his opinion he does not believe this is the case. He stated that when you live on the water boats can come up and sit there, and yes that would affect privacy, but that is still legal. Mr. McCloskey stated that staff has pointed out that view protection is related to a tree blocking a view, but making a claim that homeowners have view protection for the entire bay is not correct. Mr. McCloskey pointed out that a pier was approved to the north and while there are no exact guidelines, there is some precedent and they are trying to make as many adjustments as we can.

Chair Lynch asked have there been any discussion with the other neighbor to the north about whether they might agree to have the angle of the proposed pier more to the north?

Mr. McClosky stated that he recently met with that owner and later, her lawyer. They are fine with the current proposal but they would not be fine with it moving any closer. This might negatively impact their own existing dock. Mr. McCloskey stated there are so many parameters for compliance as well and there may be other issues like eelgrass that would have be impacted as well. Mr. McCloskey stated the neighbor to the north supports the current proposal which already has moved closer to them than the original proposal. Mr. McCloskey pointed out that the topography of Mr. Piazza's property is a bit unusual in that it faces in one direction and his pier goes another which also affects the options.

Open public hearing.

Christopher Johns, representing INJ, LLC and Anthony Piazza who are the owners and residents of 125 Belvedere Avenue, distributed a drawing to the Commission⁴ for a proposed alternative location for the pier and dock. He stated that his client is not against there being a pier at Mr. McClosky's property, but the location is what is still being discussed and what he handed out tonight would be better for his client.

Mr. Johns stated that the question of protection of views was raised in October. On page 4 of the staff report, the second paragraph states "For proposals involving new waterfront structures or additions to existing waterfront structures outside of the R1-W zone, staff and the Planning Commission, in their discretion, determine whether the proposal adequately protects views and is consistent with the uses of surrounding properties." On pages 4 and 5 the staff report says "there are no specific design review regulation objective standards that apply to maritime improvements in Richardson Bay." He stated there should be, as a matter of due process, as it affects many property rights.

Mr. Johns stated that the findings for a Conditional Use Permit are that "...requested use will not ... be detrimental to the ... general welfare of the persons residing ...in the neighborhood...and will not be injurious or detrimental to the property and improvements in the neighborhood of such proposed use." This use is right next to his client's property. He has expressed his concerns about the view, privacy and the diminution of his property. We have proposed an alternative and the discussions are still on-going.

Commissioner Stoehr observed that the alternative from Mr. Piazza goes right across the eel grass beds.

Mr. Johns stated that the current application goes across some of the eel grass beds also. In addition the proposed dock at 135 Belvedere Avenue goes across some eel grass beds. Ultimately BCDC or other agencies have their own requirements to approve these projects.

Commissioner Carapiet stated that the approved plan for 135 Belvedere Avenue's dock was modified by BCDC.

Mr. Johns replied that is a part of a current issue between the parties.

Chair Lynch asked whether the dock at 125 Belvedere Avenue used to be a part of 135 Belvedere Avenue and how the change came about.

⁴ The drawing is archived with the record of the meeting.

Mr. Johns replied after the dock at 135 Belvedere Avenue was damaged and not going to be repaired, the current dock was purchased in 1984 from 125 Belvedere Avenue.

Mr. McClosky stated that the alternative plan that Mr. Johns submitted tonight not only has possible eel grass issues, but also would impact the neighbor to the north. There is a lot that goes into the design and placement of these docks.

Close public hearing.

Commissioner Lasky stated there is no master plan for Richardson Bay or any water areas outside of West Shore. There are also no existing codes for water views. The applicant has been very responsive to the neighbors including a realignment of the pier. If it were to move over more it would complicate access for the other neighbor. There are improved impacts to the eel grass in the new location. It is difficult to pull it back because of the shallow water. The hillavator has been moved out of the setback. The uses are consistent with the neighboring properties and as a result she can make the findings for Design Review, Use Permit and the Mitigated Negative Declaration.

Commissioner Carapiet stated she visited the site, the neighbor at 125 Belvedere Avenue, and also the property at 117 Belvedere Avenue, the north neighbor, to view the story poles, both old and new. While she can sympathize with Mr. Piazza that on certain levels of his house the pier will be predominant, on the upper levels this is less of a privacy issue. It does not really affect the view because when one looks out at the view they look out, not down at the water. She agrees with Commissioner Stoehr that a reduction of the size of the pier head might reduce impacts on the neighbor. She would prefer the kayaks stored vertically also to reduce the bulk, or the possibility of relocating the lift on the gangway to move that activity away from Mr. Piazza's view. As to Mr. Piazza's alternative submittal tonight, even though there are no rules here, there needs to be considered with a sensitivity to everyone who uses the bay. It would put the north neighbor at a disadvantage. The narrowness of the property at 121 Belvedere Avenue limits the options. The property at 135 Belvedere Avenue had more flexibility for the pier given the wider frontage at the bay. She can make the findings with the added conditions she has just noted.

Commissioner Stoehr found this a difficult project. He visited the site with the owner and discussed the options. He also visited with the owner at 125 Belvedere Avenue to review the story poles from many different rooms. Many of these rooms are at water level and has a very different view than homes higher up the hill. The proposed changes follow the guidelines provided at the prior Planning Commission meeting but those changes make little difference to the impacts on 125 Belvedere Avenue. Moving the pier to the north would not be good for 117 Belvedere Avenue. The orientation of 125 Belvedere Avenue presents a difficulty as it looks across the other properties. It creates a question as to whether the orientation of 125 Belvedere Avenue 'steals' the right (although we understand that there is no such 'right') for 121 Belvedere Avenue to build a dock in his view? The findings for a Conditional Use Permit are broad. There appears to be an impact on the comfort and the property value could be negatively impacted. In regards to Design Review the large deck is close to the house at 125 Belvedere Avenue and impacts privacy at the master bedroom and bath. The best alternative might be for 121 Belvedere Avenue to work with 117 Belvedere Avenue for a joint dock. In the case there are three properties on a cove where all the property lines come down to the cove, and each one wants to have a dock it is not defined as to how one can decide which property could get that dock. He can make the findings per the staff report for the Initial Study/Mitigated Negative Declaration/Monitoring program. He stated that in regards to Conditional Use Permit, the

proposed dock sits in the primary view of the neighbor. He does not consider the view blockage significant, but the project does not meet the condition that the project would not be detrimental to the comfort of the persons residing at 125 Belvedere Avenue. Also the project does not meet the condition that it will not be detrimental to the improvements at 125 Belvedere Avenue. He cannot make the findings for the Use Permit and he cannot make the findings for Design Review because of the privacy issues.

Chair Lynch stated he has studied the project twice from the records of both hearings. He has visited 121 Belvedere Avenue and met with the owner, also met with Mr. Piazza at 125 Belvedere Avenue, and walked down the property at 117 Belvedere Avenue to view the project from the north. He commends staff for the excellent report and echoes many of the comments of his fellow Commissioners. This is not an easy or obvious solution, however, in his judgement, applying the Code as it is presented in the staff report and taking input from his fellow Commissioners he can make the findings for the Initial Study/Mitigated Negative Declaration/Monitoring program.

With respect to the findings for the Use Permit, he reads BMC Section 19.80.030 differently than Commissioner Stoehr. This refers to uses and an assessment of how those uses would affect a neighborhood as opposed to a specific property. If Mr. McClosky wanted to put a disco/night club or a cattle ranch on his property that would have a broad and detrimental impact on the properties and improvements in the neighborhood. Here this application has an impact to a single property. A use permit refers to the proposed uses and how the properties in the neighborhood are being used. The property at 125 Belvedere Avenue has a pier as confirmed by Mr. Johns, formerly owned by 135 Belvedere Avenue, and the property at 117 Belvedere Avenue has a pier (needing some improvement), and a new pier was recently approved at 135 Belvedere Avenue and there is another application for a pier at 2 Cliff Road. While it is the case that there is one active pier, there are many piers that exist, or have existed or are approved or are subject to being considered. Having another pier at 121 Belvedere Avenue does not violate the language or spirit of the Use Permit in the code section previously noted. The area is zoned for Recreation which includes boating and facilities for boats. In accordance with the staff report, this proposed pier would be compatible with similar waterfront improvements in this portion of Richardson Bay. Per the staff report, "the proposed improvements are similar in size and type to other marine-related structures installed along shoreline areas in Belvedere, including those immediately adjacent to the proposed Project site." He stated he can make all the findings for Design Review as stated in the staff report. He does not believe there is a privacy implication from a boat dock that is sufficient to prevent the findings related to privacy in the Design Review statute, Title 20. Perhaps the analysis would be different if an entire house were being constructed and be present in the primary views and would have a privacy implication. He does not believe the boat dock rises to this level. He can make the findings for all three Resolutions.

City Attorney Longfellow asked for clarification as to the added conditions of approval that have been suggested in the discussion. The Commissioners agreed that the pier head should be reduced to its smallest practical size, and the kayak lift should be limited to two kayaks in a vertical, stacked configuration, both to be approved by the Chair and the Planning Director..

MOTION: To adopt the Resolution adopting the Initial Study/Mitigated Negative Declaration/Mitigation Monitoring Program that addresses potential environmental impacts of the proposed project at **121 Belvedere Avenue**.

MOVED BY: Marsha Lasky, seconded by Pat Carapiet

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VOTE: AYES: Jim Lynch, Marsha Lasky, Pat Carapiet, Larry Stoehr
RECUSED: Nena Hart, Peter Mark, Claire Slaymaker

MOTION: To adopt the Resolution granting a Use Permit pursuant to Title 19 of the Belvedere Municipal Code for private recreational use of property zoned R-Recreation located adjacent to **121 Belvedere Avenue.**

MOVED BY: Marsha Lasky, seconded by Pat Carapiet

VOTE: AYES: Jim Lynch, Marsha Lasky, Pat Carapiet
NOES: Larry Stoehr
RECUSED: Nena Hart, Peter Mark, Claire Slaymaker

MOTION: To adopt the Resolution granting Design Review, as conditioned, for the property located at **121 Belvedere Avenue.**

MOVED BY: Marsha Lasky, seconded by Pat Carapiet

VOTE: AYES: Jim Lynch, Marsha Lasky, Pat Carapiet
NOES: Larry Stoehr
RECUSED: Nena Hart, Peter Mark, Claire Slaymaker

ADJOURNMENT

The meeting was adjourned at 8:30 pm.

PASSED AND APPROVED at a regular meeting of the Belvedere Planning Commission on February 19, 2019 by the following vote:

VOTE: Ayes:
Absent:
Abstain:

APPROVED: _____
Jim Lynch Planning Commission Chair

ATTEST: _____
Alison Foulis, City Clerk

