

## PUBLIC HEARING

**BELVEDERE CITY COUNCIL  
JANUARY 10, 2022**

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To: Mayor and City Council

From: Rebecca Markwick, Senior Planner

Reviewed By: Craig Middleton, City Manager  
Irene Borba, Director of Planning & Building

**Subject: Appeal of a Planning Commission decision made on November 16, 2021, denying Design Review for the property located 44 San Rafael Avenue. Property Owner and Appellant: Richard Laiderman**

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### **Recommended Motion/Item Description**

1. That Mayor Wilkinson preside over the Public Hearing.
2. That the City Council adopt a resolution granting the appeal and approve the Design Review for a dock expansion for the property located at 44 San Rafael Avenue.

### **Background**

#### ***Proposed Project***

The project was submitted on May 17, 2021, as a Design Review Exemption. Subsequently staff contacted the applicant and indicated that it would require a Design Review Exception (DRE), the DRE application was received on July 2, 2021. The pre-notice for the dock expansion was mailed on July 29, 2021. Staff received a phone call from the neighboring property owner, Ms. Felicie Miller at 48 San Rafael Avenue as well as a letter from her attorney, Riley Hurd III on August 6, 2021.

Staff, along with Planning Commission Chair Mark, conducted a site visit at 44 San Rafael Avenue and discussed the project with the homeowner and asked that the story poles be put in place in the lagoon to show where the exact dock extension was proposed as that was one of the concerns of Ms. Miller. Staff also conducted a site visit at 48 San Rafael Avenue to determine the impacts to the property. 48 San Rafael Avenue is uniquely situated on the lagoon; it is a corner lagoon lot, which does not provide much water access. Once the story poles were up, and the site visits conducted, staff and Chair Mark determined that the project should be reviewed by the Planning Commission. Given the unique siting of the lot, staff suggested that the proposed dock be reduced in size so that the visual impact is not so great to 48 San Rafael Avenue.

#### ***October 19, 2021, Planning Commission***

The project was reviewed at the October 19, 2021. Planning Commission hearing. Links to the October 19, 2021 meeting [agenda](#), [minutes](#) and [audio](#) are included here. The public hearing was opened and staff presented the report and recommended approval of the dock expansion with a

condition that it be reduced in size. There were comments from the neighbors, two property owners were in support of the project and two property owners were opposed to the project. The property owners at 48 San Rafael Avenue vocalized that they could be amenable to the expansion if it were reduced in size. There was some confusion about the Belvedere Lagoon Property Owners Association's (BLPOA) role in "approval" and whether the BLPOA would still be able to clean the corner of the lagoon with the dock extension. Per standard policy and practice, staff sent the project to the BLPOA once it was received. In their letter dated May 28, 2021, BLPOA had no objection to the proposed work provided that the property owner receive approval from the City of Belvedere.

Chair Mark closed the public hearing and the Commission deliberated. Two of the Commissioners were concerned with the size of the dock in this specific location and that a dock in this location would have a significant impact to the neighbors. Another Commissioner was concerned with the impacts to the neighbors and could not support the project because the structure as designed was not harmonious with the neighboring properties. One of the Commissioners was in support of the project. Most of the Commissioners could not make the findings to approve the project as designed and requested the property owner to revise the project; the project was continued.

### *Planning Commission Denial*

The Planning Commission reviewed the project again at the November 16, 2021 hearing. The [Staff Report](#), [minutes](#) and [audio](#) can be found using the links. Staff presented the report and indicated that the dock had been reduced in size by 44 percent and recommended approval of the dock expansion.

The public hearing was opened and the property owner and applicant Richard Laiderman described his outreach to the neighbor at 44 San Rafael, Ms. Miller. They discussed the size of the dock and Mr. Laiderman agreed to reduce it in size and to move the paddleboard and fix the fence. He also offered to support her in extending her own dock. When he put up the new story poles he then heard from Ms. Von Stroh, who wanted further reduction of size. He offered to reduce it to 6 feet, which is 1 foot less than what he discussed with Ms. Miller. With that reduction, the size was 52% less than the original application.

Robert Miller, son of the owner of 48 San Rafael Avenue, spoke next. He indicated that his mother's objection to the proposed dock extension is misunderstood. Her objection is that the extension of the dock extends into her view corridor and into the shared Lagoon and does not meet the standards that the Planning Commission must consider.

Sprague Von Stroh, 1 Hilarita Circle had concerns about privacy impacts and the view impacts to their home.

The Commissioners deliberated on the dock expansion; the [minutes](#) reflect their deliberations which ultimately ended up in a tie vote. A tie vote is considered a denial.

On November 29, 2021, City staff received a timely appeal of the Planning Commission's decision by Richard Laiderman.

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### Analysis

The applicant has stated in his appeal letter:

1. *“My proposal is clearly in conformance with all the design review criteria in section 20.04.005 and 20.04.110 to 20.04.120.*
2. *It is entirely within my property line and smaller than neighboring docks. It is not even up against my property line as are many other docks.*
3. *I have a fundamental right to enjoy and improve my own property.*
4. *The objections of neighbors were based on invalid premises.*
5. *The support of other neighbors was ignored.*
6. *Dissenting commissioners cited objections outside the scope of both design review and neighbors’ objections to which I was not given the opportunity to respond.”*

In summary, the appeal contains these main arguments: 1) the dock is in conformance with the Design Review findings; 2) the objections of the neighbors were based on invalid premise; and 3) the Commissioners arguments against the dock were not based on Design Review findings.

Staff notes that the City Council’s review of the project is de novo, meaning that the Council reviews the project as a matter of first impression and that all issues are properly before the Council. (*BreakZone Billiards v. City of Torrence* (2000) 81 Cal.App.4th 1205, 1221.) While the City Council may utilize the Planning Commission’s discussion, comments, and decision to inform its independent analysis, the City Council is the final decision-maker and is not bound by the Planning Commission’s action. (*Id.*) Here, the Council analyzes the project based on the standards found in Design Review section of the Municipal Code.

### ***No Violation of Design Review Code; No View or Privacy Impacts***

Staff suggests that all Design Review findings can be made, and there are no impermissible view or privacy impacts.

In Belvedere, the Municipal Code does not provide property owners with a right to absolute privacy or an unobstructed view.<sup>1</sup> Rather, limits are placed on views and privacy in the Design Review Code, which were crafted to balance the interests of maintaining privacy and views with the private-property interests of developing and improving property.

For example, fences and screening should not “significantly block views.” (Bel. Mun. Code, § 20.04.150(B).) Building and window placement should “give consideration to the privacy of adjacent buildings.” (Bel. Mun. Code, § 20.04.160.) Landscape plans should provide privacy between properties, and consider the future impact that new plantings may have on significantly

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<sup>1</sup> Please note that there are other sections of the Municipal Code that consider view impact and privacy, which do not apply here. For example, when considering an application for an Exception to Total Floor Area Ratio, the Planning Commission considers whether the additional requested square footage will reduce the neighbor privacy and whether it will significantly impair primary views. (Bel. Mun. Code, § 19.52.120(A)(1).) Additionally, Chapter 8.28 prohibits the obstruction of a preexisting view that was in place at the time a property owner purchased the property, by trees and shrubbery. Neither of these sections are applicable in the current project before the Council.

obstructing views. (Bel. Mun. Code, § 20.04.200(B)-(C).) By the Code language, the construction of a dock does not implicate a view or privacy analysis.

Although no specific privacy or view Design Review findings apply here, staff suggests that all applicable Design Review criteria are satisfied, including a balanced and harmonious relationship between the improvement and the site, the minimization of bulk and mass, and the colors and materials used. (Bel. Mun. Code, §§ 20.04.120-140.) As the final decision-maker, the City Council reviews the project for compliance with these Design Review standards (Chapter 20.04).

**Conclusion**

Staff recommends that the City Council adopt a resolution approving the appeal and that it approves Design Review for the property located at 44 San Rafael Avenue.

**Recommendation**

1. That Mayor Wilkinson preside over the Public Hearing.
2. That the City Council adopt a resolution granting the appeal and approve the Design Review for a dock expansion for the property located at 44 San Rafael Avenue.

**Attachments**

1. Draft City Council resolution granting the appeal and approving the project.
2. Appeal of Planning Commission action and letter of appeal filed by Richard Laiderman on November 29, 2021.
3. Letter from the BLPOA, dated May 28, 2021