

**FINAL ADOPTED MINUTES**

**CAPITOLA PLANNING COMMISSION MEETING**

**THURSDAY, FEBRUARY 5, 2015**

**7 P.M. – CAPITOLA CITY COUNCIL CHAMBERS**

Chairperson Smith called the Regular Meeting of the Capitola Planning Commission to order   
at 7 p.m.

**1. ROLL CALL AND PLEDGE OF ALLEGIANCE**

Commissioners: Ron Graves, Ed Newman, and TJ Welch and Chairperson Linda Smith.

Absent: Gayle Ortiz

**2. ORAL COMMUNICATIONS**

### Additions and Deletions to Agenda - None

## Public Comment - None

1. Commission Comment

Chairperson Smith acknowledged receipt of a letter from Pat McCollough.

1. Staff Comments - None

**3. APPROVAL OF MINUTES**

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| **A.** | **January 15, 2015, Draft Planning Commission Minutes** |

**A motion to approve the January 15, 2015, meeting minutes was made by Commissioner Newman and seconded by Commissioner Graves.**

**The motion carried by the following vote: Aye: Commissioners Graves, Newman, and Welch and Chairperson Smith. No: None. Abstain: None.**

**4. CONSENT CALENDAR - No items**

**5. PUBLIC HEARINGS**

1. **4555 Opal Street #14-179 APN: 034-061-17 & 18**

Fence Permit application with request for a height exception up to 7 feet along the rear and side property line and a Major Revocable Encroachment Permit for a 3-foot concrete wall in the right-of-way of 4555 Opal Street, located in the R-1(Single Family Residential) Zoning District.

This project is in the Coastal Zone but does not require a Coastal Development Permit.

Environmental Determination: Categorical Exemption

Property Owner: Mark Williams, filed: 12/16/14

Representative: Prime Landscape Services

Assistant Planner Ryan Safty presented the staff report. He explained the two agenda items are part of a larger landscaping design, the remainder of which does not require permits. A second proposed structure was removed since it did not meet set-back requirements. Regarding the fence height request, he shared images showing that homes to the back have second- story windows overlooking the yard and portions of the fence that are intended as “sound walls.” The cement front yard wall encroaches at points into the public right-of-way.

Commissioner Graves asked if the setback could be delineated for the right-of-way. Staff noted that a property survey is part of the recommended conditions.

Commissioner Welch asked if recent public surveys addressed privacy. Community Development Director Rich Grunow responded that it was mentioned as a concern, but the City’s many small lots make it difficult to mitigate.

Commissioner Newman noted a six-foot maximum fence height is common among jurisdictions.

Chairperson Smith opened the public hearing.

Applicant Mark Williams presented several photos. He noted that excavation was done to prepare for the low-water landscape and estimates that six inches of soil will be refilled, leaving the height 6’5” from ground level. He reviewed support of neighbors found in the packet and said he found examples in the neighborhood of other high fences.

Commissioner Newman asked him why he did not use the allowed six feet with two feet of lattice. Mr. Williams responded he didn’t like that style. Commissioner Newman expressed disappointment that a local landscape firm did not know or check fence height requirements and built an unpermitted fence that did not comply.

Commissioner Graves noted that the landscape design includes trellises at points along the fence and lattice on the fence could serve similar function. He visited the site and heard some concern from neighbors. He worried that someone parking would not be able to open a car door in the area of wall encroachment that comes within two feet of the curb, although other commissioners noted that section was close to the driveway. He confirmed that rafters would not extend over the fence.

Ron Wood, neighbor at 4575 Opal, asked if he could continue the fence height into his yard to match. Commissioners and staff responded that he must file for an exception and they cannot give advisory opinions about future applications. Director Grunow explained that each application is reviewed based on its individual characteristics, but when a precedent is established, the intent is to be even-handed for similar requests.

Landscape contractor John David addressed Commissioner Newman’s question, saying the fence height was based on windows in the back neighbors’ homes.

A Jewel Box area neighbor said she has complied with code requirements for her own projects and noted this increased height is setting a precedent for the neighborhood. She agreed the fence is beautiful, and said she and other neighbors may want to follow suit if an exception is granted.

Chairperson Smith closed the public hearing.

Commissioner Graves recalled the standard for six feet of solid fencing and two more of lattice was a compromise developed for a home in the McCormick neighborhood. He said the current allowance would provide more privacy in this case. He did not want to set a precedent and any change should be left to the zoning update.

Commissioner Welch understands the conflict with the zoning code for the fence as built and also appreciates the privacy concerns, making a decision difficult. It may be an item to consider in the zoning update.

Commissioner Newman said as long as the code has a requirement, it should be upheld. He has no concerns about the encroachment.

Commissioner Welch confirmed that the code allows for Planning Commission exceptions. Director Grunow explained that staff approaches exceptions in a similar manner to a variance and found no unusual characteristics to support applying the rules differently in this circumstance.

Chairperson Smith asked to review the code language for the fence height. She asked if it could be interpreted that it is silent on a seven-foot total height and only eight feet must have two feet open. Director Grunow said the Commission could continue the item and ask the City Attorney for an opinion.

**A motion to approve both the Major Revocable Encroachment Permit and height exception for application #14-179 was made by Commissioner Welch and seconded by Chairperson Smith. The motion failed with the following vote: Aye: Commissioner Welch and Chairperson Smith. No: Commissioners Graves and Newman. Abstain: None.**

**A motion to approve only the Major Revocable Encroachment Permit within application #14-179 was made by Commissioner Newman and seconded by Commissioner Graves with the following conditions and findings:**

**CONDITIONS**

1. The application is for a height exception for a solid fence that was built 7 feet high and major revocable encroachment permit for a future 3-foot tall cement wall. The major revocable encroachment permit was approved by the Planning Commission on February 5, 2015. The height exception for the solid fence was denied.
2. The application was submitted in response to a code violation for the installed 7 foot high solid fence. The height exception was denied, therefore the applicant must bring the fence into compliance with the 6-foot height regulation. The applicant must bring the fence into compliance by March 5, 2015.
3. All construction and site improvements shall be completed according to the approved plans, as conditioned by the Planning Commission. The site shall be surveyed prior to installation of the concrete wall to identify the front property line. Only the rock wall is allowed to encroach into city right-of-way. The decorative circular wall element with rocks must be built within the property owner’s property.
4. Other than the cement wall, there shall be no additional permanent structures located within the right-of-way without the issuance of a major revocable encroachment permit by the Planning Commission.
5. Prior to any work in the public right-of-way, the applicant shall complete the paperwork for a revocable encroachment permit with the Public Works Department. A revocable encroachment permit shall be recorded prior to installation of the cement wall.
6. At time of submittal for a public works encroachment permit review, the Conditions of Approval must be printed in full on the cover sheet of the construction plans.
7. At the time of submittal for the revocable encroachment permit, Public Works Standard Detail Storm Water Best Management Practices (STRM-BMP) shall be printed in full and incorporated as a sheet into the construction plans.  All construction shall be done in accordance with Public Works Standard Detail Storm Water Best Management Practices (STRM-BMP).
8. Prior to making any changes to approved plans, modifications must be specifically requested and submitted in writing to the Community Development Department. Any significant changes shall require Planning Commission approval.
9. Prior to issuance of public works encroachment permit, all Planning fees associated with permit #14-179 shall be paid in full.
10. During construction, any construction activity shall be subject to a construction noise curfew, except when otherwise specified in the building permit issued by the City. Construction noise shall be prohibited between the hours of nine p.m. and seven-thirty a.m. on weekdays. Construction noise shall be prohibited on weekends with the exception of Saturday work between nine a.m. and four p.m. or emergency work approved by the building official. §9.12.010B
11. This permit shall expire 24 months from the date of issuance. The applicant shall have a recorded Public Works revocable encroachment permit and construction underway before this date to prevent permit expiration. Applications for extension may be submitted by the applicant prior to expiration pursuant to Municipal Code section 17.81.160.
12. The planning and infrastructure review and approval are transferable with the title to the underlying property so that an approved project may be conveyed or assigned by the applicant to others without losing the approval. The permit cannot be transferred off the site on which the approval was granted.

**FINDINGS**

1. **The application, subject to the conditions imposed, will secure the purposes of the Zoning Ordinance, General Plan, and Local Coastal Plan.**

Community Development Department Staff, and the Planning Commission have reviewed the project. The project secures the purposes of the R-1 (Single Family Residence) Zoning District. A height exception for a fence has been denied and the major revocable encroachment permit for a cement wall has been granted by the Planning Commission to carry out the objectives of the Zoning Ordinance, General Plan and Local Coastal Plan.

1. **The application will maintain the character and integrity of the neighborhood.**

Community Development Department Staff and the Planning Commission have reviewed the project. The project is located along Opal Street in the R-1(Single Family Residential) zoning district, just east of the Opal Street and 45th Avenue intersection. As recommended with the denial of the fence height exception, the project fits within the integrity of the neighborhood. The proposed 7-foot high fence will not match the surrounding neighbors and will not maintain the character of the neighborhood.

1. **This project is categorically exempt under Section 15301 of the California Environmental Quality Act and is not subject to Section 753.5 of Title 14 of the California Code of Regulations.**

This project involves construction of a new fence and cement wall in the R-1 zoning district. Section 15303 of the CEQA Guidelines exempts the construction of a fence in a residential zone.

**The motion carried by the following vote: Aye: Commissioners Graves, Newman, and Welch and Chairperson Smith. No: None. Abstain: None.**

1. **DIRECTOR’S REPORT**

Director Grunow reported that Ideal Homes has applied to extend its permit for the model home on Bay Avenue.

A community meeting to discuss the update to the General Plan Housing Element has been set for March 4 at 6 p.m.

The zoning ordinance update issues and options paper will be distributed at the March meeting, but staff will not ask for any guidance or decisions until April. Then it will be broken into sections for discussion.

**7. COMMISSION COMMUNICATIONS**

Commissioner Graves confirmed the Community Commercial zoning for the Ideal Homes model lot and asked if a permit was granted for Toyota to park cars there. Director Grunow said no permit was requested.

**8. ADJOURNMENT**

Chairperson Smith adjourned the meeting at 8 p.m. to the regular meeting of the Planning Commission to be held on Thursday, March 5, 2015, at 7 p.m. in the City Hall Council Chambers, 420 Capitola Avenue, Capitola, California.

Approved by the Planning Commission on March 5, 2015.

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Linda Fridy, Minute Clerk