

## COMMUNITY DEVELOPMENT AGENCY

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April 28, 2015

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Marin County Board of Supervisors  
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**SUBJECT:** Novotny appeal of the Planning Commission's approval of the Noyer Design Review Permit 14-99  
60 Eden Lane, Tiburon,  
APN 039-041-35.

Building and Safety  
Environmental Health Services  
Planning  
Environmental Review  
Housing  
Sustainability  
Code Enforcement  
GIS  
Federal Grants

Dear Board Members,

**RECOMMENDATION:**

On February 9, 2015, the Planning Commission upheld by a 5-1-1 vote (Paoli abstained and Erickson was absent), the administrative decision conditionally approving the Noyer Design Review application. On behalf of the Planning Commission, staff recommends the Board deny the appeal filed by Matt Novotny et. al and sustain the Planning Commission's action by adopting the attached resolution to approve the project.

[www.marincounty.org/cda](http://www.marincounty.org/cda)

**SUMMARY:**

The project site is a vacant lot on Eden Lane located in the R1-B2 zoning district. Legal access to the project site is from both Eden Lane and the unnamed driveway easement via Paradise Drive in Tiburon. The Design Review would allow the construction of a 4,272 square foot, 3-story single family residence that would result in an 18.5 percent floor area ratio. The residence would have a maximum height of 30-feet above the surrounding grade and the exterior walls would have the following minimum setbacks: 19 feet from the roadway easement along the eastern front property line; 19 feet from the northern side property line; 80 feet from the roadway easement along the eastern rear property line. Additional project features that were approved included new landscaping and hardscape elements, in addition to stucco, wood siding, and vinyl clad windows project materials. Lastly, access to the project would be from an unnamed private drive via Paradise Drive located along the western property line.

An Administrative Decision conditionally approving the Noyer Design Review was issued on November 21, 2014. The administrative approval was subsequently appealed to the Planning Commission by Matt Novotny, the adjacent property owner at 6 Eden Lane. In the appeal to the Planning Commission, Mr. Novotny asserted that the project was deficient with regards to tree protection/tree replacement measures, in addition to requesting additional screening measures to protect privacy.

On February 9, 2015, the Planning Commission conducted a hearing on the appeal. At the meeting, the appellant raised additional concerns stating that the project was

not compatible with the surrounding homes, that there would be privacy impacts related to the master bedroom's south facing windows and deck, and that there were concerns regarding construction impacts on the access easements.

The Planning Commission adopted a resolution partially approving the Novotny appeal and partially denying the Novotny appeal, thus upholding the Noyer Design Review approval subject to a condition of approval that would require an arborist's report. The arborist's report would evaluate the trees along the common property line between the appellant's property at 6 Eden Lane and the project site, provide a list of tree protection measures where applicable, and describe a tree replacement plan if trees would need to be removed as a result of the project. Any trees to be removed would need to be replaced with evergreen trees at a 2:1 ratio. The Planning Commission also imposed a condition of approval that would require the applicant to submit a final landscape plan that would include a minimum of four 24 inch box trees to screen the perimeter of the southern facing deck.

The appellant filed a subsequent appeal of the Planning Commission's decision asserting that the project would create privacy impacts due to a lack of screening associated with tree removal and the deck and windows associated with the master bedroom located on the south elevation.

Despite the conditions of approval that address tree removal and tree replacement, the appellant is concerned that all of the trees located on the common property lines would need to be removed due to Wildland Urban Interface fuel management regulations. In speaking with Jessica Power, Fire Inspector with the Tiburon Fire Protection District, on Wednesday, April 8, 2015 (after the Planning Commission hearing), the existing trees along the southern property line may not remain in their current overgrown state and at least one tree (the cypress tree closest to the proposed master bedroom deck located on the south elevation) would need to be removed due to fire related setback requirements associated with pyrophytic trees. However, with a Tiburon Fire Protection District approved tree maintenance plan, the other trees may remain. If the tree maintenance plan is not approved by the Tiburon Fire Protection District, then the project would need to replace the trees at a 2:1 ratio with non-pyrophytic native evergreen trees per condition 2b.

Regarding the master bedroom deck and window, the appellant is requesting the following:

1. The deck be removed;
2. The master bedroom windows be removed or have the window sills raised; and
3. The master bathroom windows be raised or frosted.

The project conditions of approval relative to the requirement of a final landscape plan are intended to address the screening and privacy concerns. Specifically, condition 2c requires a minimum of four 24 inch box evergreen trees to be planted around the perimeter of the deck to address the appellant's privacy and screening concerns related to the master bedroom deck and windows. However, in light of the new information received from the Tiburon Fire Protection District regarding the removal of the cypress tree, and as an alternative for consideration, your Board may want to consider the removal of the master bedroom deck and either removal of or modification to the south facing window. Although conditions of approval would require new trees to be planted to address the potential privacy impacts, it is unclear

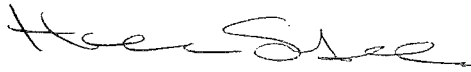
how long it would take the trees to be become established and provide the required screening. Additionally, the placement of the trees may not provide the required screening as a result of the Wildland Urban Interface fuel management setback regulations. Therefore, as requested by the appellant, the removal of the deck and window modifications would further address the privacy impacts related to the Noyer Design Review.

**REVIEWED BY:**

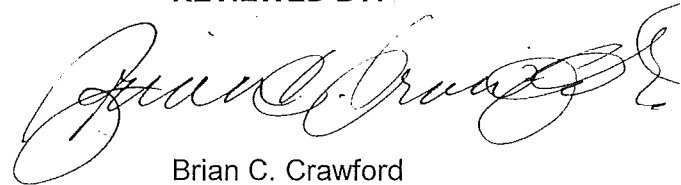
Department of Finance                     N/A  
 County Counsel                             N/A  
 Human Resources                            N/A

**SIGNATURE:**

**REVIEWED BY:**



Heidi Scoble, AICP  
Planner



Brian C. Crawford  
Director

**ATTACHMENTS:**

1. Recommended Resolution Denying the Novotny Appeal and Conditionally Approving the Noyer Design Review
2. Novotny Petition for Appeal and attachment, dated February 23, 2015
3. Supplemental Email prepared by Matt Novotny dated April 14, 2015
4. Tiburon Fire Protection District letter, dated April 6, 2015
5. Minutes from the Planning Commission Hearing on February 9, 2015
6. Approved Resolution PC 15-002 from the Planning Commission Hearing on February 9, 2015
7. Planning Commission Staff Report from the Planning Commission Hearing on February 9, 2015
8. Supplemental Information presented to the Planning Commission on February 9, 2015 from Matt Novotny