



CITY OF NEWPORT BEACH BUILDING AND FIRE BOARD OF APPEALS MINUTES

100 Civic Center Drive
CDM Conference Room (Bay E-1st Floor)
Newport Beach, California
Tuesday, September 10, 2024 – 3:30 p.m.

I. CALL MEETING TO ORDER – The meeting was called to order at 3:30 p.m.

II. ROLL CALL

Present: Chair Khosrow (Saum) Nourmohammadi and Board Members Charles Allen, Dirk Bondy, Bill Caskey, Kenneth Kasdan, and John Walz

Absent: Board Member Michael Manning

Staff Present: Tonee Thai, Chief Building Official/Secretary to the Board
Debi Schank, Administrative Assistant

III. PUBLIC COMMENTS ON NON-AGENDA ITEMS

Jim Mosher suggested the Board meet at least once a year.

IV. ELECTION OF OFFICERS

1. SELECTION OF BOARD VICE CHAIR

Board Member Bondy nominated Charles Allen for Vice Chair.

No public comment was received.

Chair Nourmohammadi closed the nominations.

A vote was conducted and by a show of hands and Board Member Allen was elected as Vice Chair.

V. MINUTES OF OCTOBER 19, 2022

2. APPROVAL OF OCTOBER 19, 2022 MINUTES

Recommended Action: Approve minutes of October 19, 2022

Motion was made by Chair Nourmohammadi to approve the minutes by a raise of hands. The Minutes of October 19, 2022, with Jim Mosher's edits, were unanimously approved, and carried (5-0-1-1).

AYES: Allen, Bondy, Caskey, Nourmohammadi, Walz
NOES: None
ABSENT: Manning
ABSTAIN: Kasdan

VI. PUBLIC HEARING

3. Building and Fire Board of Appeals (X2019-3305)

Site Location: 1113 Kings Road

Project Summary:

1113 Kings Road - The applicant is appealing the Chief Building Official's determination that a building permit application must be filed with the City, and a building permit issued, before a wooden fence can be built on top of a retaining wall. The Chief Building Official issued a decision letter on May 01, 2024, that a building permit for the wooden fence is required.

Recommended Action:

- a) Conduct a public hearing;
- b) Staff recommends the Board uphold the Chief Building Official's determination requiring the Appellant apply for a building permit to erect a wooden fence on top of existing retaining wall in accordance with California Building Code Section 105.1 as adopted by NBMC 15.02.010.

Chair Nourmohammadi referenced Detail 6 on page TS3 from a letter from Michael Shonafelt, the applicant's lawyer, regarding a request for continuance. In response to Chair Nourmohammadi's inquiry into the reasons for a continuance, Mr. Shonafelt stated that the staff report features an error in the construction events regarding the railing replacement. He emphasized the importance of this channel of procedure because it's the only option and clarified the appeal pertains to the notice of violation. He stated that the applicant found the notice of violation to be without basis, there is only one construction improvement pursuant to a permit, the wall is constructed with a railing that is compliant with the Newport Beach Municipal Code (NBMC) and California Building Code (CBC), the dispute is that the applicant should not have been issued the notice, the applicant hoped to work out a solution with the City outside of the hearing, and associated costs.

Chair Nourmohammadi indicated that there is no statement related to costs in the building code and safety, people, and environment are included. Furthermore, he stated that despite receiving Mr. Shonafelt's letter too late (30 minutes before the start of the hearing), he wanted to give him a chance to respond to the question and thought his response did not address the question presented.

Mr. Shonafelt stated that continuance is important because this is the last and only procedural channel of dispute for the notice of violation and the applicant has rights under the law to present the case.

Chair Nourmohammadi relayed that not enough time was provided for the Board to review the letter and suggested a process to argue the error in the notice of violation.

Vice Chair Allen indicated that it was never relayed that the wrought iron railing was never installed, and the City has the right to have the applicant correct the error even after a Certificate of Occupancy.

Chair Nourmohammadi emphasized that the only question being addressed is if the applicant is allowed a continuance, the applicant is stating that the staff report has errors that can be disputed in Item No. 6, what else the applicant can bring to the Board for review, the owner has to pull a permit for the fence, and the unanswered question and if a continuance would address it.

In response, Mr. Shonafelt stated that the questions will be answered with a continuance, mistake of fact was not addressed earlier because it was realized for the first time in the staff report for this hearing, a fence was built pursuant to the permit, and the City of Newport Beach relied on a error of law cited to the wrong provision of the NBMC and incorrect assumptions that are the foundation for the Board's authority. Furthermore, he demerited the accusation that the railings were removed and reinstalled it in the dark of the night, clarified that the installed railing is compliant with the CBC, NBMC, and building permit, and acknowledged that the permit does not disallow installing a wooden railing.

A representative of the City stated that the first notice of violation was in November 2023 followed by a second notice in December 2023, and an administrative citation was issued in January and three in February with no appeals. He noted that correspondence from the property owner took place after the City's office of the attorney and Chief Building Inspector sent a final notice of violation and letter. Finally, he noted that the issue and structure has been in place for almost one year, one continuance has been granted with no resolution during that time, and the City declined the current continuance and deferred to the Board.

Mr. Shonafelt thought that the characterization facts make it look like the applicant has been "sitting on their thumbs" the entire time and noted active discussions with the City's outside council and City Attorney Harp, written correspondence to the City disputing the basis for the notices from November 2023 to present, and active discussions for a global settlement through mediation in lieu of filing appeals that did not include this issue. Additionally, he indicated that a timely appeal was filed once the applicant realized there was continued enforcement actions, and the goal is to make peace with the entire situation.

Chair Nourmohammadi thought the Board had heard enough.

Motion made by Chair Nourmohammadi, seconded by Board Member Bondy to allow for a continuance from September 10 on to occur.

AYES: Caskey, Allen
NOES: Bondy, Kasdan, Nourmohammadi, Walz
ABSENT: Manning
ABSTAIN: None

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In reply to Vice Chair Allen's inquiry about if the Board has the right to grant a continuance, Chair Nourmohammadi stated before the vote took place that the Board can vote on it.

Chief Building Official Thai utilized a presentation to review the issue and appeal, the scope of the appeal, what is not subject to the appeal, and an approved plan for partial drawings showing the location of the wrought iron guards on top of a retaining wall on the west side of the property.

In reply to Vice Chair Allen's question, Chief Building Official Thai clarified that the retaining wall is part of the construction and Chair Nourmohammadi directed him to the drawings to review the elevation.

In reply to Board Member Caskey's question, Chief Building Official Thai relayed that the approved drawings indicate that the retaining wall is located wholly within the owners' property.

Chief Building Official Thai continued with the presentation to review the approved drawing's elevation showing wrought iron guards on top of a retaining wall on the west side of the property and relayed the elevation on top of the fencing is 89.0, as-built photos of the wooden fence at the west side wall in question on the neighbor's side, applicable code, and staff recommendation.

In reply to Chair Nourmohammadi's request, Chief Building Official Thai reviewed the site plans to ensure the Board is viewing them correctly.

In reply to a Board Member's inquiry, Deputy Community Development Director Murillo clarified the height from the grey area to the top of the retaining wall and noted it is greater than seven feet.

In reply to Chair Nourmohammadi's inquiry, Chief Building Officer Thai clarified that the wrought iron being depicted is shown in Detail 6 on page TS3.

In reply to Board Member Caskey's question, Board Member Bondy stated that the property line can be seen in Detail 6.

Mr. Shonafelt stated that the recommendation and the facts presented by Chief Building Official Thai are incorrect, there is no preexisting wrought iron railing that is being replaced that needs to be clarified for the record, the rail was built pursuant to the building permit, there is no requirement for a 40 percent opening in the railing and what was built is in compliance, there was no attempt to sideline the permit or flout the City's building authority, a certificate of occupancy followed, the applicant respects staff and the authority of decision makers, no seen earlier action was because the applicant was trying to resolve the matter and not create new ones, and the current action is with the intent to preserve the applicant's rights. He inquired about the appeal channel to the Planning Commission and thought a continuance was appropriate to get an accurate staff report with a proper characterization and recommendation.

In reply to Board Member Kasdan's question, Mr. Shonafelt confirmed that the constructed wooden railing in the photographs is substantially conformed to all code requirements, and it's the appellant's contention that the wooden fence substantially comply with the permit as detailed on one sheet of the building plans. He asked the City building department to give the appellant an interpretation that a solid wood fence substantially conformed to a wrought iron fence noted in Detail 6, but they did not get far enough in the discussion for the Chief Building Official to do so.

Board Member Walz inquired if the Chief Building Official has decided if the fence is in substantial compliance.

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Chair Nourmohammadi stated there is a wrought iron fence with a four-inch opening and noted the question of substantial compliance with a wooden fence.

Discussion took place about whether the fence is a guardrail.

Chair Nourmohammadi clarified the difference between a detail and the wood fence is a substantial compliance of the detail and staff's request for plans.

Board Member Caskey questioned missing drawings that include a wood fence.

Vice Chair Allen relayed that the plans stated a wrought iron fence, and no wrought iron fence was built.

Board Member Bondy thought the focus is on a completely different fence built and questioned how negotiations outside the City can address a Newport Beach building department question. He relayed that detail changes can be easily reviewed and approved (or not) over the counter at the building department before construction and he did not think a building official would consider a solid wood fence to be the same thing as an open wrought iron fence and in substantial conformance.

Chair Nourmohammadi stated that the number one issue is safety, code will dictate the look of the fence, structural engineer signed off on a wrought iron fence on February 24, 2023, and applicant's communications should have stopped this matter.

In reply to Chair Nourmohammadi's question, Mr. Shonafelt stated that the wood structure is not equivalent to Detail 6, TS3, and structure safety issues are unfounded and should not be the basis of a decision. He asked how to address grievances.

Chair Nourmohammadi opened public comments.

Fawzia Azadian, next door neighbor, relayed examples of dishonestly and exploiting the system by the applicant, opposed the appeal, noted cameras pointed at her property and open showers, expressed concern for the height of the wall, questioned why there is no wall on the other side of the property, and stated that neighbor David Lyons at 1201 Cliff Drive and TJ Williams at 1110 Kings Road have asked for the appeal to be denied.

Mr. Shonafelt responded to the public comment, relayed that he cannot speak to many of the public comments because they are related to litigation with his prior firm, noted the purpose of the railing is to address safety issues, thought the issues by the neighbors are not relevant for the discussion, indicated a heated dispute between the neighbors and nothing on record to support that the Reeds skirt the law, and acknowledged the right to contest the basis for the violation notice.

Gus Azadian, 1121 Kings Road, stated that the settlement included fraud, deceit, and property damage.

Mr. Shonafelt thought that there is a break down in discussions and, thus, the reason for the hearing to resolve the fence issue, noted that the contractor is licensed professional and constructed the fence in good faith and according to the building permit, and thanked the Board for listening to the matter.

Ms. Azadian stated that a notice to the public should have been posted on the house for 10 days and asked that documentation for the hearing be available to the public.

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Mr. Azadian stated that Chief Building Official Thai and Deputy Community Development Director Murillo approved the wood fence, as per Ryan Burress.

Chair Nourmohammadi stated that he believes the photos provided from Ms. Azadian and acknowledged the material inconsistencies. He asked for comments from the staff.

Joseph Meeks, Deputy City Attorney, noted Mr. Reed's intent to comply with the building permit, the wooden fence is not included in the approved plans, letters from the Chief Building Inspector after the fence construction, numerous citations from code enforcement, building permit requirements for a wood fence, irrelevant comments regarding misstatements of fact, the board's power to make its own findings of fact heard at the hearing, NBMCs definition of a guard rail separate from a fence and not interchangeable, rights to appeal, the building permit review process, rules of evidence, and adequate public notice.

Chief Building Official Thai stated that the Board's decision at the hearing will direct the building permit requirement for the installation of the wood fence.

Chair Nourmohammadi closed the public hearing.

Chair Nourmohammadi opened discussions among the members of the Board and received no comments.

Motion was made by Chair Nourmohammadi and seconded by Board Member Walz to approve the staff recommendation.

AYES: Allen, Bondy, Caskey, Kasdan, Nourmohammadi, Walz
NOES: None
ABSENT: Manning
ABSTAIN: None

VII. COMMITTEE ANNOUNCEMENTS OR MATTERS WHICH MEMBERS WOULD LIKE PLACED ON A FUTURE AGENDA FOR DISCUSSION, ACTION OR REPORT (NON-DISCUSSION ITEM)

Chair Nourmohammadi concurred with Mr. Mosher's suggestion for an annual Board meeting.

Board Member Kasdan suggested reviewing the Chief Building Official's recommendation for code adoptions.

VIII. ADJOURNMENT

With no further business, Chair Nourmohammadi adjourned the meeting at 5:09 p.m.