



## Item No. 12 Town of Atherton

### CITY COUNCIL STAFF REPORT – PUBLIC HEARING

**TO:** HONORABLE MAYOR AND CITY COUNCIL

**THROUGH:** GEORGE RODERICKS, CITY MANAGER

**FROM:** STEPHANIE B. DAVIS, AICP, PRINCIPAL PLANNER  
ANDREAS BOOHER, DEPUTY CITY ATTORNEY

**DATE:** JUNE 15, 2022

**SUBJECT:** APPEAL OF A PLANNING COMMISSION DECISION TO DENY A VARIANCE TO ALLOW FOR A FENCE/WALL TO EXCEED SIX FEET IN HEIGHT AND TO ALLOW FOR A RETAINING WALL TO BE LOCATED LESS THAN FIVE FEET FROM THE PROPERTY LINE AT 25 ISABELLA DRIVE.

### RECOMMENDATION

It is recommended that the City Council conduct the public hearing, deny the appeal, and uphold the decision of the Planning Commission to deny the Variance application at 25 Isabella Drive to allow a fence to exceed six (6) feet in height and a retaining wall to be located less than five (5) feet from a property line based on the findings outlined below.

1. There are special circumstances applicable to the property, including size, shape, topography, location or surroundings, where the strict application of the Zoning Title deprives such property of privileges enjoyed by other property owners in the vicinity and under identical land use zoning district classification.

*Basis for finding:* Staff does not believe that this finding can be met. A variance is intended to address a hardship that results from unique or special conditions of the property and that were not self-created physical improvements to the site. The existing topographic conditions that result in the current different fence/wall height between 15 and 25 Isabella Avenue are not inherent to the lot and were artificially created.

2. Granting the Variance does not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and zone in which such property is situated.

*Basis for finding:* Staff does not believe that this finding can be met as the granting of a Variance at this property could be considered the granting of a special privilege inconsistent with the limitations placed upon other properties in the vicinity. Other properties in the vicinity have constructed fences between their adjacent neighbors based on existing topographic conditions that were not artificially created. Issuing a variance for this request may be considered issuing an exception pertaining directly to the nature of the applicant's request and

individual circumstances related to the physical site improvements and created soil elevation changes, not upon the nature of the property itself before site improvements were made.

3. Granting the Variance will not adversely affect the interest of the public or the interest of the residents and property owners in the vicinity of the premise in question.

*Basis for finding:* Staff does not believe this finding can be met. The as-built fence/wall may adversely affect the interest of the general public or residents in the vicinity, as it creates an inconsistent height situation with adjacent properties and is not consistent with development standards in the vicinity.

4. The granting of the Variance is consistent with the objectives of the General Plan and the Zoning Code.

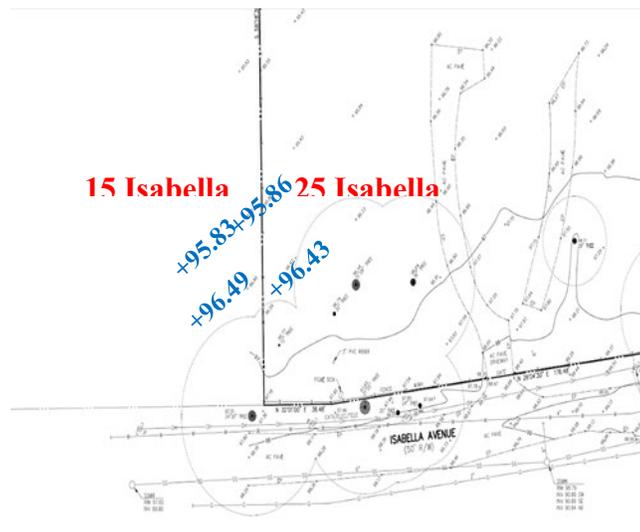
*Basis for finding:* Staff does not believe this finding can be met, as the General Plan and Zoning Ordinance specify it is intended for the orderly use of land, for the provision of adequate light and air, and to promote the public health, safety, and general welfare. The as-built condition of the fence/wall exceeds the Town’s height limitations.

## **BACKGROUND**

### *Site Conditions*

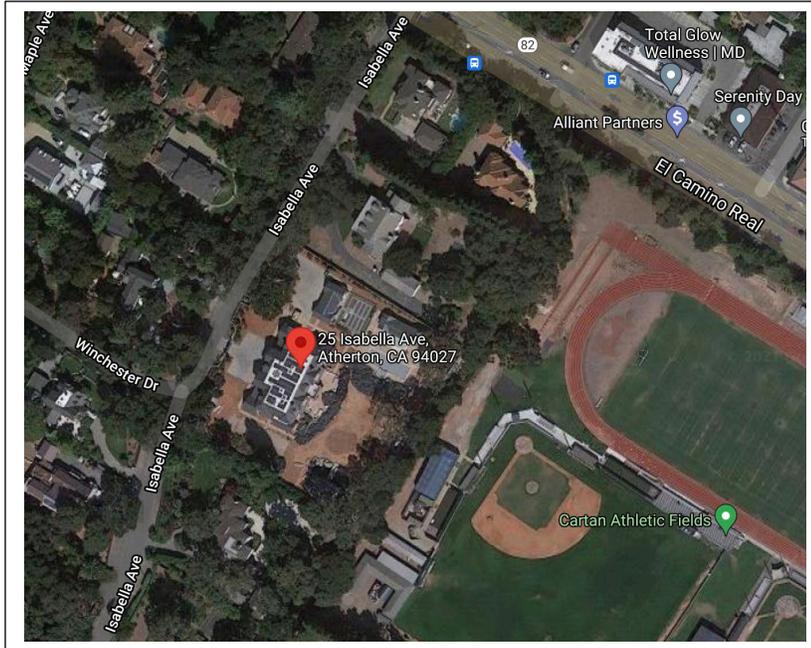
The subject site at 25 Isabella Drive is an 86,323 square foot (1.9 acre) flat, interior lot. In May 2016 building permits were issued for construction of a new main residence and detached garage, in which such improvements have been completed. At the time of building permit issuance, the existing topographic conditions between the property at 25 Isabella and the adjoining property at 15 Isabella resulted in both properties being approximately “level” with one another, or at the same elevation. See excerpt of survey Figure 1 below and full survey in Attachment 6.

**Figure 1: 25 Isabella Topographic Survey (Excerpt), 2015**



The property is surrounded on both sides by other low-density, single-family homes and the Cartan Athletic Field to the rear. See Figure 2 below.

**Figure 2: 25 Isabella and Surrounding Neighborhood**

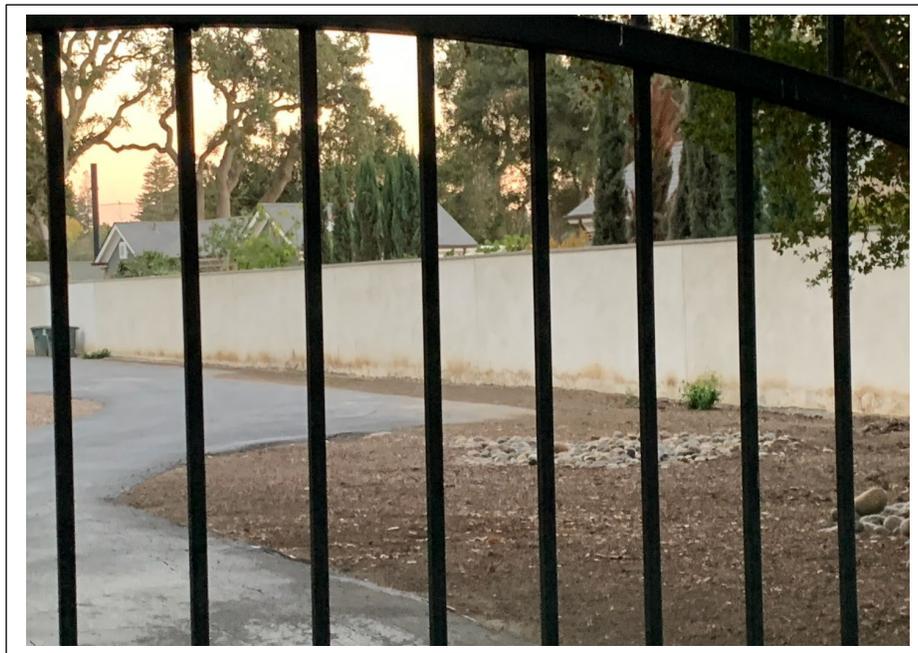


The property contains a fence/wall, constructed of concrete, finished with stucco and built upon an approximate two (2) foot tall retaining wall located along the shared property line with the adjacent property at 15 Isabella Avenue. Given differences in the artificially created topography between the two properties (discussed in more detail under “*Background*” below), the fence measures eight (8) feet in height when measured from the 15 Isabella property and six (6) feet in height from the 25 Isabella property. See photos below:

**Figure 3: Fence/Wall (as constructed) Viewed From 25 Isabella**



**Figure 4: Fence/Wall (as constructed) Viewed From 15 Isabella**



### *Background*

The fence/wall began construction in approximately spring of 2019 and was completed in approximately September 2019. Part of this fence/wall construction included the construction of an approximate two (2) foot retaining wall and subsequently a six (6) foot tall fence constructed of concrete on top of the retaining wall. The entire structure was finished in stucco on both sides. This resulted in the 8-foot-tall fence/wall structure. Prior to construction of the fence/wall, the applicant was advised by Town Building Department that no permit was required for construction of a new, shared side yard good neighbor fence/wall as the Town does not require a permit for a good neighbor fence that adheres to the Town's maximum allowable fence height of six (6) feet and that prior to construction consultation with the neighbor should occur. When providing that direction, Town Building Department staff was not informed by the applicant that such a fence/wall was to be constructed on top of a two (2) foot tall retaining wall.

Related, and to the best of Town knowledge, Town staff notes that at some point in 2019 the Town notes that the overall site was re-graded which resulted in overall topographic elevation change to the property at 25 Isabella Avenue raising the elevation of the property at 25 Isabella Avenue, approximately 2 feet above the adjoining property at 15 Isabella Avenue. No permit was issued by the Town in consideration of the overall site grade change. While the Town would not have required a permit for an overall site grade change in and of itself, an associated grading and drainage permit would have been required for the related construction pertaining to retaining walls required to accommodate such grade change.

In April 2020, a formal complaint was received by the Town for construction of a wall that exceeded the maximum allowable height of six (6) feet in conflict with Atherton Municipal Code (AMC) Section 17.46.030 (B) and a Code Enforcement Case was opened on May 1, 2020 by the Town's Code Enforcement Officer. Upon Town staff discovery of the retaining wall construction along the shared property line at 15 and 25 Isabella Avenue in May of 2020, Town staff advised the applicant that a grading and drainage plan was required to be submitted. The applicant's

prepared such grading and drainage plans that were submitted and subsequently approved by the Town's Department of Public Works (DPW). DPW staff note their review of grading and drainage plans is reviewed in the context of drainage flow and not in context of compliance with any zoning provisions. However, it is noted that these grading and drainage plans, associated with the overall site grade change discovered by the Town, were approved by DPW staff based on plans from the project engineers which displayed "existing" topographic conditions. Such "existing" topographic conditions reflected the approximate two (2) foot site grade change, not the actual existing topographic conditions of the property prior to any site development as otherwise would be required. It follows that the DPW approval of the grading and drainage plans resulted in an approval of plans which misrepresented conditions of the site.

From the time of opening the formal code enforcement case in May 2020 by the prior Town Code Enforcement Officer, until her resignation from the Town in May 2021, the Town's Code Enforcement Officer worked extensively with the property owner, including conversations with the adjacent property at 15 Isabella, in attempts to resolve the complaint. In February 2021, the Town's prior Code Enforcement Officer advised the owner of potential remedy options available; to either reduce the height of the wall to not exceed six (6) feet, or apply for a Variance. The property owner was made aware by the Code Enforcement Officer of these options and that the choice of corrective action would be up to them. The Code Enforcement Officer further noted that while Code Enforcement has worked to resolve disputes and has been fairly successful in the past, the staff role is limited to following the Atherton Municipal Code (AMC) and that she was willing to facilitate a meeting with between the property owner and adjacent neighbor, but that the discussion would have to be limited to the fence/wall issue. The applicant chose to apply to allow for the construction (in this case to maintain a fence/wall already constructed) that exceeds six (6) feet in height through issuance of a Variance by the Planning Commission in May 2021. Upon submittal of the Variance application to the Planning Department in May 2021, as staff began reviewing the application materials and permit history associated with the site, it was noted that an additional Municipal Code violation (beyond just a fence height in excess of six (6) feet) was present; specifically, that a retaining wall was constructed less than five (5) feet from the property line in conflict with Section 17.46.030 (D). The applicant was informed of such in September 2021 and the Variance application was put on hold until violations were further addressed.

In January 2022 the applicant was contacted by Town staff in follow-up to determine how the property owner would like to proceed; either modifying the existing site conditions to comply with the AMC or to move forward with a Variance application, noting staff would not be able to support a Variance. The property owner decided to move forward with a Variance application to consider:

- (1) construction of fence greater than six (6) feet in height. and;
- (2) construction of a retaining wall less than five (5) feet from the property line.

On March 23, 2022 the Planning Commission voted (5:0) to deny the Variance application. The March 23, 2022 Planning Commission staff report and attachments are included as Attachment 2 and approved meeting minutes as Attachment 4. Link to video recording of the Planning Commission meeting is included as Attachment 3. In terms of public comment, the March 23, 2022 Planning Commission staff report includes 1 item of public comment from the property owner of 15 Isabella Avenue noting their opposition of the proposed Variance and twenty-three (23) items of public comment from surrounding neighbors on Isabella Avenue, Winchester Drive and Faxon Road received by the applicant from their own public outreach efforts in support of the

proposed Variance application. The Commission discussion included comments that the wall/fence was built in noncompliance with the Town regulations, that the wall/fence was based on incorrect plans, that there was no visual relief from the adjacent property at 15 Isabella Avenue, and that the 2-foot height differential between the 15 and 25 Isabella property was more visually prominent in the field than the photos depicted. Public comment during the meeting was received from the adjacent property owners at 15 Isabella Avenue in opposition to the Variance. Following the decision of the Planning Commission, the property owner subsequently applied to the City Council to appeal the decision of the Planning Commission denying the Variance.

## **ANALYSIS**

### *Atherton Municipal Code (AMC) Applicable Regulations*

Fences and walls (including retaining walls) are regulated by Chapter 17.46 of the Atherton Municipal Code (AMC).

- Section 17.45.030 specifies the maximum height of a fence and wall shall not exceed six (6) feet unless otherwise indicated (under certain locational provisions – none of which are applicable in this situation).
- Section 17.46.030 (B) of the AMC defines fence height measurement, “...to be taken from natural grade at the base of the fence to the uppermost part of the fence”. Section 17.26.060 defines natural grade as, “...the original condition of the ground surface as it existed prior to mechanical grading or disturbance”.
- Section 17.46.030 (D) which states, “Retaining walls shall be located no closer than five feet from any property line...”

Variance are regulated by Chapter 17.16 of the AMC. The purpose of a Variance is to allow the Town to grant exceptions to the development standards and provisions in cases where, because of special circumstances applicable to the property, the strict application deprives such property of privileges enjoyed by other properties in the vicinity and under identical land use zoning districts. Variances can be granted by the approval authority only if the designated approval authority makes all four (4) of the required findings:

1. *There are special circumstances applicable to the property, including size, shape, topography, location, or surroundings, such that the strict application of this title deprives such property of privileges enjoyed by other property owners in the vicinity and under identical land use zoning district classifications.*
2. *Granting the variance does not constitute a special privilege inconsistent with the limitations upon other properties in the vicinity and land use zoning district in which such property is located.*
3. *Granting the variance will not adversely affect the interest of the public or the interest of residents and property owners in the vicinity of the premises in question.*
4. *The granting of the variance is consistent with the objectives of the general plan and this title.*

As taller fences, as well as retaining wall less than five (5) feet from the property line, are both prohibited, the available Municipal Code option to allow for consideration of such would be to be granted a Variance by the Planning Commission. As noted, the applicant’s submitted Variance

application was denied by the Planning Commission at their March 23, 2022 meeting as the Commission was not able to make all four (4) of the required findings for the reasons as noted above.

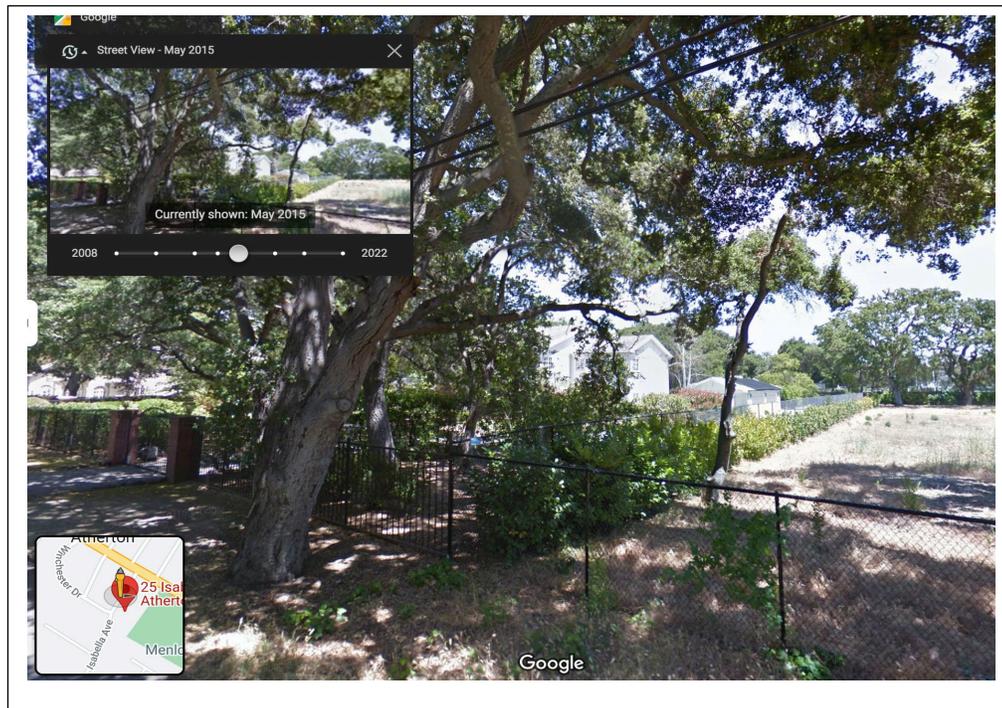
### *Appellants Letter of Appeal*

The applicants have submitted a letter of appeal providing background as property owners and basis for the appeal of the Planning Commission’s decision to deny the application (Attachment 1). The applicant’s original submittal package as presented to the Planning Commission, including a project narrative, proposed plans, project arborist report and twenty-three (23) submitted neighbor letters of support are included as part of Attachment 2. The applicant’s current letter of appeal (Attachment 1) summarizes five (5) points in argument as to why the applicant believes the Variance should be granted. These five (5) points are reiterated by the applicant in greater detail within Attachment 1. Staff has provided a summary of each of these five (5) points and a staff response to each point below.

1. *The wall replaced a fence of identical height that was present for many years with no issue.*

Staff Response: Upon review of Google Imagery from 2015, the presence of a 6-foot tall fence between the two adjacent neighboring properties prior to any site development activities at 25 Isabella which have created the physical conditions of the site to-date, reflect a 6-foot tall fence on the shared property line between the two properties of relatively the same grade level (plus or minus approximately 2 inches). See images below:

**Figure 5: 2015 Google Imagery of Shared Fence Between 15 & 25 Isabella**



2. *That the property owner relied on Town representations approving the plans for the house (which included the wall) that the property owner would not have built otherwise.*

Staff Response: Staff requested the DPW review the Town’s approved civil plans for the property at 25 Isabella, which included a topographic survey of the entire property prior to any development of the site occurring, as well as the successive revised set of plans subsequently submitted by the applicant following permit issuance in 2016 to opine on the referenced grade or elevations changes to the lot (referred to as “soil elevation changes” by the applicant). Upon DPW staff review, it has been determined that prior to construction of any site development at 25 Isabella Avenue beginning in 2016, including the new main residence, as well as the existing shared fence/wall in question between 15 and 25 Isabella, there was only an approximate 1-inch grade difference in the location where the existing fence/wall in question is currently constructed (effectively almost level) – see Figure 1 above and Attachment 6. DPW staff further notes that at some point between the original permit issuance for the site development in 2016 and subsequent plan revisions in 2020 (estimated at some point in 2019), the "soil elevation changes" referenced by the project applicant as part of this Variance application were made at 25 Isabella, artificially creating the approximate 2-foot grade difference that currently exists. Following the site grade change at 25 Isabella, the existing fence/wall in question was constructed. The DPW notes that the grading and drainage plans approved by the Town were approved by material misrepresentation of the plans; specifically that approval of the civil plans had misrepresented “existing” grades which shows the 2-foot elevation difference between the properties at 15 and 25 Isabella as “existing”.

Given the determination that the topographic conditions of 25 Isabella Avenue, as documented by the prepared topographic survey originally submitted to the Town prior to any site development in 2015 (Attachment 6), were different than the topographic conditions at the time when the existing fence/wall in question was constructed, combined with the fact that the existing topographic conditions of the site at 25 Isabella Avenue were artificially created, it is found that the height of the fence/wall does not meet the required findings for consideration of issuance of a Variance as noted above as the existing physical conditions of the site, are not inherent to the property itself, but created.

3. *That only after monies were spent in the construction of the wall, did the height and footing become an issue for the Town.*

Staff Response: As noted in the Background section above, the issue of a fence being constructed greater than 6-feet arose through the submittal of a Code Enforcement case to the Town submitted in May 2020. It is the duty of the Town Code Enforcement Officer to respond to cases regarding potential code enforcement issues. Following applicant’s original Variance submittal application in May 2021, it was determined by Planning staff of an additional Municipal Code violation associated with the fence/wall construction – specifically that the fence/wall constructed directly on the property line was constructed on top of 2-foot tall retaining wall in violation of Section 17.46.030 (D) which states, “*Retaining walls shall be located no closer than five feet from any property line...*”

4. *That the as-built wall improves the area and the privacy of the neighbors.*

Staff Response: The as-built fence and associated retaining wall creates a disproportionate condition between two adjacent residential properties on two relatively flat lots unlike other similar properties in the surrounding neighborhood and throughout Town. The standard 6-

foot tall fence height between two adjacent neighboring residential properties has been found to provide adequate privacy between two neighbors, coupled with landscape screening.

5. *That challenging the Town’s denial will result in lengthy and costly litigation to the Town.*

Staff Response: The applicant’s threat of litigation is not a valid basis for deviation from the Town’s adopted standards with respect to the as-built fence and associated retaining wall. The applicant’s threat of litigation is also not a valid factor in considering the findings necessary to support approval of a Variance.

The Town Arborist has reviewed the plans and does not note any issues or concerns with the fence as constructed as it does not result in impacts to existing heritage trees.

Notice of tonight’s meeting was mailed to all property owners within 500 feet of the subject site. To date, staff has received one (1) item of public comment from the adjacent neighbor at 15 Isabella, stating their opposition to the appeal application. This letter is included as Attachment 7.

### **ALTERNATIVES AND RECOMMENDATION**

The Council has the following options:

1. Uphold the decision of the Planning Commission and deny the appeal, thereby denying the request for a Variance.
2. Approve the appeal and thereby approve a Variance to allow for an eight (8) foot tall fence and construction of a retaining wall less than five (5) feet from a property line or as further amended by the Council. A draft approval certificate has been included as Attachment 5.
3. Refer the application back to the Planning Commission for consideration.

Staff is not supportive of the Variance request as staff does not find the application meets all four required findings in order to grant approval. Specifically, existing site topographic conditions that have resulted in the current condition of the existing fence/wall height resulted from physical improvements that were artificially created at the site, and not natural site conditions inherent to the lot. It is the Planning Staff’s professional opinion that the proposal would in turn constitute the granting of a special privilege and that there are no special conditions that inherently apply to this parcel and is therefore recommending the City Council uphold the Planning Commission’s decision to deny the Variance request.

### **ENVIRONMENTAL IMPACT**

The proposal has been determined to be exempt from the provisions of the California Environmental Quality Act (CEQA) to CEQA Section 15303, Class 3, which permits new construction of small structures.

### **POLICY FOCUS**

Both the Land Use Element of the General Plan contains statements and goals pertaining to proposed residential development.

- *Land Use Element purpose statement: “The Zoning Title of the Municipal Code limits the residential building intensity and bulk by the use of floor area ratios, setbacks, height, and other development standards.”*
- *Land Use Goal 1.223: To retain the high quality of maintenance and living environment existing in the Town’s residential neighborhoods.*

It is the intent of the applicable Municipal Code Chapter 17.46 “Fences and Walls” to regulate the height and location of fences to provide privacy and establish buffers between properties. Further in this Chapter, the purpose of requiring a minimum 5-foot setback distance for retaining walls from properties is to clearly delineate such wall locations for purposes of clear ownership, maintenance, upkeep, and impact to adjacent properties. Additionally, such setbacks are also intended to create a visual buffer between adjacent properties and allow potential for landscape screening. Further, it is the intent of Municipal Code Chapter 17.16 “Variances” , to grant exceptions from development standards because of special circumstances applicable to a property, where the strict application of this title deprives such property of privileges enjoyed by other property in the vicinity and under identical land use zoning districts. Variances are not intended to be granted for activities not otherwise permitted by zoning district regulations. As noted above, there are no special circumstances found inherent to the subject site that were not artificially created, resulting in existing conditions not natural to the site.

### **FISCAL IMPACT:**

All costs covering the processing of this application are paid for by the applicant.

### **GOAL ALIGNMENT**

This Report and its contents are in alignment with the following Council Policy Goals:

- Goal B – Preserve Small Town Character and Quality of Life
- Goal F – Be Forward-Thinking, Well-Managed, and Well-Planned

### **PUBLIC NOTICE**

Notice of this application was mailed to all property owners within 500 feet of the subject property and other interested parties. Public notification was achieved by posting the agenda, with this agenda item being listed, at least 72 hours prior to the meeting in print and electronically. Information about the project is also disseminated via the Town’s electronic News Flash and Atherton Online. There are approximately 1,200 subscribers to the Town’s electronic News Flash publications. Subscribers include residents as well as stakeholders – to include, but be not limited to, media outlets, school districts, Menlo Park Fire District, service providers (water, power, and sewer), and regional elected officials.

### **ATTACHMENTS**

1. [March 23, 2022 Planning Commission Staff Report and Attachments](#) (online link only. Hardcopy provided upon request)
2. [Planning Commission Meeting Recording, March 23, 2022](#) (online external link, relevant portion for item at 25 Isabella Avenue begins at the 46 minute:57second mark)

3. March 23, 2022 Approved Planning Commission minutes
4. Draft Variance Certificate
5. 25 Isabella Avenue – 2015 Topographic Survey
6. Public Comment – 15 Isabella, June 3, 2022

ANDREW G. WATTERS, ESQ.  
LITIGATION ATTORNEY

555 TWIN DOLPHIN DR. STE. 135  
REDWOOD CITY, CA 94065 · +1 (415) 261-8527  
ANDREW@ANDREWWATTERS.COM

May 19, 2022

Town Council  
Town of Atherton  
80 Fair Oaks Lane  
Atherton, CA 94027

Re: 25 Isabella Ave., Atherton, CA  
Appeal of Denial of Variance

Dear Town of Atherton,

I am a lawyer in Redwood City. I represent Ms. Weina Yu and her company, T & W Sunny, LLC, in connection with their home construction project at 25 Isabella Avenue. This letter is the argument on appeal of the recent denial of the variance for Ms. Yu's wall on March 23, 2022. I discuss the factual situation, provide legal authority, and then argue for why the variance should be granted on appeal.

In summary, (1) the wall replaced a fence of identical height that was present for many years with no issues; (2) Ms. Yu relied to her detriment on Town representations approving her plans for the house (which included the wall), and she would not have built the wall otherwise; (3) only belatedly in 2021, after \$126,000 was already spent in construction costs on the wall, did the height and footing of the wall become an issue for the Town; (4) the wall as-built improves the area and the privacy of the neighbors; and (5) challenging the Town's denial will result in costly administrative litigation that could take years and at least half a million dollars of taxpayer funds to resolve. In our view, a reasonable compromise is letting the wall remain as-is, but adding soil on the neighbors' side to decrease the height of the finished wall on that side (it is only six feet high on my client's side). The neighbors have expressed a desire to plant on their side; perhaps adding a two foot-high planter box would work here.

The attachments to this letter are referred to throughout the letter and support each point as needed.

**Factual Background**

This appeal relates to the wall between 25 Isabella and 15 Isabella. The wall is a six foot-high stucco wall (six feet high on my client's property, eight feet high at 15 Isabella), with a concrete footing below grade. The wall is depicted in the following photos:

//



The wall as viewed from 25 Isabella.



The wall as viewed from 15 Isabella. The discoloration at the bottom appears to be from where soil was removed.

The plans for the wall as approved by the neighbors at 15 Isabella are attached as attachment 6 and 7.

In the year 2019, the Town represented that no permit was needed for the wall. In the 3/23/2022 hearing, the Town admitted this fact. So the wall never had to have a permit.

The "July 2020 permit" refers to the general civil plan for

the entire new home construction. When the Town was handling the wall in June 2020, planners asked my client to revise the civil plan and resubmit it, then they officially approved it. These modifications included but were not limited to: updating the as-built grading into the civil plan; designing a 280-foot drainage along the wall into the civil plan. In sum, **the plans included the wall.**

On 6/8/2020, inspector David Huynh went to the site and expressed his concerns about the as-built grading along the wall. After that, it was the Town who asked my client to update the as-built grading into the civil plan. The person who made this request might be David Huynh, or some other town officials. But no matter who made the request, in the emails our civil engineer sent to Mr. Huynh, she has mentioned multiple times that the as-built grading would be updated into the civil plans, and Mr. Huynh had no objection. **He then approved the updated civil plans in July 2020.**

But in 3/23/2022 hearing, Mr. Huynh said that when he approved the July 2020 civil plan, he did not know that our civil engineer had updated the as-built grading into the civil set. *That was not accurate.* His excuse was that this content was not marked with "clouds," so he didn't notice it. However, on 6/8/2020, he had been on the site and clearly questioned the as-built grading. Why didn't he say anything when our civil engineer's emails repeatedly told him that the as-built grading would be updated into the civil set? The fact is, in June and July 2020, Mr. Huynh had agreed with the revisions and had given my client the green light (In July 2020, he officially approved the updated civil plan). See attachment #1, #2, #3, the witness letter, and the email conversations.

Since January 2019, my client has exchanged hundreds of emails or texts with the owners of 15 Isabella, and they never expressed any concerns about the wall's height or the retaining wall issue.

In the 3/23/2022 hearing, the reason 15 Isabella misrepresented the facts was to pressure my client to agree to their unreasonable financial demands for compensation that is not due. In 9/25/2019 texts they said "I can assure you now that we will have no problem with the stucco fence itself. We are concerned about the cleanup, possible damage to the asphalt, and restoring the planting strip along the fence including the sprinkler pipes." Since then, they have been refusing my client to repair the claimed damages and instead demanded cash compensation. However, in the 3/23/2022 hearing, 15 Isabella didn't mention the fact that they have been requesting cash compensation from my client. Instead, what they said was, they never knew the wall would be eight feet tall, and that they never knew soil on our side was two feet higher than theirs, and they could not accept either. **This was not true.** See attachments #9, #10, #11, #13, #14, #17, #18 clearly showing that the

neighbors were aware of all of this and approved the wall. They had to know the details because they made my client install a 280 foot-long drainage pipe after reviewing the plans.

It's no secret that writs of administrative mandate cost substantial amounts of money on both the plaintiff's side and the municipality's side. It's not just the initial filing; it's the trial and appeal. My client could easily spend \$150,000 in attorney fees on this, not including expert witnesses and similar costs. The Town will easily spend \$250,000 in attorney fees defending, plus experts, Town employee time, and other taxpayer-funded costs. It's simply uneconomical to proceed with this on the Town's side. On my client's side, she is stuck because she has already spent over \$164,000 on the wall and cannot just tear it out. Recognizing that the process could have been better and that there were mistakes on both sides, we are asking you to consider granting the variance in this case because it would save half a million dollars in attorney fees and one to two years of administrative litigation where nobody really wins.

In the event we do proceed to administrative review in court, I am taking the extraordinary step of providing my raw thoughts and impressions, and research in this area, as a preview of where things will go.

My client will assert at least the following points in the writ petition:

1. The Town approved the plans with the two foot grade increase and is therefore estopped from claiming that the wall is in violation.

2. The Town told my client that no permit was required for the wall, and she relied on that representation to her detriment. Thus, the Town is estopped from claiming the wall is in violation.

3. The wall as-built substantially complies with all applicable ordinances and codes, and even exceeds the Town's requirements in some aspects, and therefore in equity should remain.

4. There is no harm to anyone from letting the wall remain, which only improves the neighbors' privacy at the extra height, which in any case is the same height as the original fence when my client purchased the property.

As part of this discussion, I provide my research from several cases we have looked at internally:

*Feduniak v. Cal. Coastal Commission* (2007) 148 Cal.App.4th 1346

//  
//

I. Short Summary of Feduniak v. CCC:

Owner 1 bought a property in the early 1980s. They got a permit from the California Coastal Commission to rebuild the house. 86% of the property would be recorded as an open space easement to protect the scenic and natural habitat values of the site. In actually landscaping the property, Owner 1 did not follow the plan that was part of the permit and instead installed a three-hole golf course on the property.

Owner 1 sold the property to the Feduniaks/Owner 2 in 2000. The Feduniaks did not know about any easements or restrictions.

In August 2001, a local Foundation asked the Feduniaks to ensure the property complied with the terms of the open space easement, of which the Feduniaks had no prior knowledge.

In July 2002, the Foundation informed the Feduniaks that their landscaping did not comply with the easement and asked them to bring the property into compliance.

In September 2002, the Foundation informed the Commission, who notified the Feduniaks that they were in violation of the easement. The Feduniaks would not change their landscaping. The Commission then issued a cease-and-desist and restoration orders and commenced a formal proceeding. The Feduniaks sought a writ of administrative mandate. The Commission said that they immediately commenced their investigation and notification process as soon as they learned about the violation from the Foundation.

The trial court found that the Commission should be estopped from enforcing its orders against the Feduniaks, but the Commission successfully appealed. On appeal, the court decided that the record does not support the elements required for estoppel.

In terms of land use ordinances, it is an uphill battle to apply estoppel against a government agency.

II. Long Summary of Feduniak v. CCC:

The property in question is located in Monterey County. In May 1983, the original owners applied to the California Coastal Commission for a development permit to demolish the house and build a new one. In July 1983, the Commission granted the permit, with conditions.

The Commission noted that the parcel is located in an "environmentally sensitive habitat area" (ESHA) because of its unique, indigenous flora. They decided the site required "restoration" rather than "preservation" based on things they noticed about vegetation/plant life on site. The Commission decided the owners could build a new home on 14 percent of the parcel only. It required the owners to "dedicate and record an open space easement for the protection of the scenic and natural

habitat values on the site, ” to cover the remaining 86 percent. The easement would include provisions “to prohibit development; to prevent disturbance of native groundcover and wildlife; to provide for maintenance and restoration needs in accordance with the approved landscape plan; and to specify conditions under which non-native species may be planted or removed, trespass prevented, and entry for scientific research secured.” It required that the owners have their landscape plan prepared by a professional botanist, and that the Commission would have to approve the plan. The Commission’s intention was to protect an ESHA.

The owners agreed to and initially complied with the conditions. The Commission reviewed the owners’ landscape plan and issued a permit accordingly. The owners ended up modifying the landscape plan to include a three-hole golf course. They submitted it to the Pebble Beach Company for approval but did not submit it to the Commission or seek any supplemental permit (as was required by their permit). By 1985, the new house and the three-hole golf course were complete.

In 1996, the owners’ architect applied to the Monterey County Planning and Building Inspection Department for a permit to build an external building on the property. In the application, he represented that there were no easements on the property. The Department approved the application.

In 2000, the Feduniaks bought the property. In the real estate documents, the original owners admitted that there were “encroachments, easements or similar matters that may affect [the Feduniaks’] interest in the subject property.” But they only disclosed a “fence encroachment,” failing to disclose the easement and permit restrictions.

The Feduniaks obtained a title report from the title company, but it did not reveal the restrictions – despite the restrictions being recorded. The Feduniaks did not consult with the Commission or otherwise rely on the Commission in any way in deciding to purchase the property. Mr. Feduniak testified that they would not have bought the property (for \$13 mil) if the golf course had not been there.

In August 2001, someone from the Foundation (name of Foundation unknown) asked the Feduniaks to arrange an inspection review to ensure the property was in compliance with the terms of the open space easement, which he attached to his letter. The Feduniaks were shocked about the easement.

The Foundation then visited the property and in July 2002 informed the Feduniaks that the current landscaping did not comply with the easement. Staub (of the Foundation) knew the previous owners installed the landscaping and that the Feduniaks did not know about the easement. Still, he gave the Feduniaks a copy of the original (approved) landscape plan, offering it as

a starting point to bring the property into compliance. He also offered the help of experienced habitat consultants.

In September 2002, the Commission learned from Staub about the problem. They visited the parcel and in December notified the Feduniaks that they were in violation of the easement. They asked the Feduniaks to submit a removal and restoration plan. The Feduniaks declined. The Commission then issued a cease-and-desist and restoration orders, then commenced a formal proceeding. They then issued cease-and-desist and restoration orders. The Feduniaks sought a writ of administrative mandate.

At the hearing, a former Commission member testified that he had seen the golf course for many years. He was unaware of the easement or the permit requirements.

Two people who worked for the Pebble Beach Company testified that they met with commissioners at other properties, on different occasions, and that the three-hole golf course was plainly visible. They said none of the visits concerned the golf course itself, and there was no discussion of its compliance.

The Commission enforcement staff had no reason to monitor the property after the original owners submitted their plan and got it approved. As soon as they learned about the violation from Staub, they immediately commenced their investigation and notified the Feduniaks in writing about the problem, advising them on how to resolve the issue and notifying them that failure to do so could result in an enforcement action.

The trial court found that the Commission should be estopped from enforcing its orders against the Feduniaks, because (among other things) the Commission should have known the golf course violated the easement and permit restrictions, because (1) the golf course was easily visible, and (2) it had been there for eighteen (18) years, and (3) the Commission did not inspect the site until 2002.

The Commission successfully appealed. On appeal, the court decided that the record does not support the elements required for estoppel.

### III. *Feduniak* Test for Applying Estoppel

*Feduniak* sets forth that three elements must be satisfied for the court to apply equitable estoppel against a commission or other government entity.

For the court to apply equitable estoppel against a government agency, it must find that:

1. The governing entity had knowledge (actual or imputed) of the violation;

2. Either (a) the governing entity intended for the resident to take some action based on its own regulatory inaction, or (b) it was reasonable for the resident to believe that the governing entity intended others to take action based on its regulatory inaction; and

3. Estopping the governing entity would not nullify a strong rule of policy adopted for the public's benefit. The injustice to the resident without estoppel must outweigh (and thereby justify) any effect upon public interest or policy that results from estopping enforcement of the government's orders.

#### Government's Knowledge

To apply estoppel against the government, the court must find that the governing entity had knowledge (actual or imputed) of the violation. Knowledge may be actual or imputed.

In terms of estoppel, if a party is in such a position that he should have known the true facts of a situation, even if he is ignorant or mistaken of the real facts, knowledge will be imputed to him. See *Long Beach v. Mansell* (1970) 3 Cal. 3d 462.

Imputation of knowledge of pertinent facts is especially appropriate when a party is negligent or made affirmative representations related to said facts. *Id.*

In *Feduniak*, the trial court stated that the golf course was so visible that the Commission should have checked to make sure it complied with easement restrictions. The golf course was "prominently located and visible from the 17 Mile Drive." This, plus testimony that various Commission members could see the golf course in the course of their work, supported an inference that the Commission should have been aware of the golf course's existence.

However, "it is well established that mere silence will not create an estoppel unless there is a duty to speak." *Spray, Gould & Bowers v. Associated Internat. Ins. Co.* (1999) 71 Cal. App. 4th 1260, 1268. In *Feduniak*, we must look at whether the Commission had a duty to speak or act on its knowledge, under the particular circumstances. A duty to speak is based on "principles of natural justice," not just legal obligations or other agreements. See *Elliano v. Assurance Co. of America* (1970) 3 Cal. App. 3d 446, 451.

*Feduniak* found that the Commission did not have a statutory duty to inspect all properties to ensure compliance with permits after they are issued, and certainly not one to do so continually after a permit is issued. It is unrealistic to expect an agency like the Commission to glance at a property and decide whether it is in compliance with permits/restrictions.

In sum, even the existence of a highly-visible violation, that

was in fact seen by various members of the Commission, does not necessarily support a finding that the Commission had constructive knowledge of the violation.

Government's Intention

The court must also find one of two things: either that (a) the governing entity intended for the resident to take some action based on its own regulatory inaction, or (b) it was reasonable for the resident to believe that the governing entity intended others to take action based on its regulatory inaction.

In regards to (a), in Feduniak, the court found "no evidence that the Commission intended for anyone to take action based on the fact that it had not enforced the easement for numerous years, and the trial court did not so find." Feduniak v. California Coastal Com. (2007) 148 Cal. App. 4th 1346, 1367.

So we turn to (b): was it reasonable for the resident to believe that the governing entity intended others to take action based on its own regulatory inaction?

There is no evidence that the Commission knowingly (yet passively) consented to the golf course, because the Commission tried to get the violation fixed as soon as they got notice of it. "It is purely speculative to infer that the Commission's inaction signaled regulatory acceptance." Feduniak v. California Coastal Com. (2007) 148 Cal. App. 4th 1346, 1367. "Estoppel will not be applied where it is based on surmise or questionable inference." Lee v. Board of Administration (1982) 130 Cal. App. 3d 122, 135 (emphasis added).

This case thus sets forth that even if a resident infers acquiescence from the inaction of a government agency, it is still unreasonable for the resident to rely and act in it. See Feduniak v. California Coastal Com. (2007) 148 Cal. App. 4th 1346, 1368 (emphasis added).

Even if a resident has no reason to suspect that its property violates any restrictions, that finding alone is not enough to support estoppel. The Feduniak court found that it would have been unreasonable for the residents to believe there would be no future enforcement action despite a violation of valid land use restrictions. See Id.

The failure to enforce a restriction or ordinance against a violator will not estop the government from subsequently enforcing it. See Fontana v. Atkinson (1963) 212 Cal. App. 2d 499.

Balancing Public Interest

Finally, the court must find that estopping the governing entity would not nullify a strong rule of policy adopted for

the public's benefit. The injustice to the resident without estoppel must outweigh and thereby justify any effect upon public interest or policy that results from estopping enforcement of the government's orders.

Unfortunately, in regards to land ordinances, estoppel may only be applied "in the most extraordinary case where the injustice is great and the precedent set by the estoppel is narrow." *Smith v. County of Santa Barbara* (1992) 7 Cal. App. 4th 770, 775 (emphasis added).

"The point is that public policy may be adversely affected by the creation of precedent where estoppel can too easily replace the legally established substantive and procedural requirements for obtaining permits." *Id.* "Each case [of government estoppel] must be examined carefully and rigidly to be sure that a precedent is not established through which, by favoritism or otherwise, the public interest may be mulcted or public policy defeated." *Imperial Beach v. Algert* (1962) 200 Cal. App. 2d 48, 52.

A court of equity must find that "the injustice which would result from a failure to uphold an estoppel is of sufficient dimension to justify any effect upon public interest or policy which would result from the raising of an estoppel." *Long Beach v. Mansell* (1970) 3 Cal. 3d 462, 496-497.

Our Case

Clearly, this situation is within the three-part *Feduniak* test and equitable estoppel should be applied. First, as to government knowledge, clearly the Town knew of the eight foot wall height on the neighbors' side because the Town approved the two foot grade increase on my client's side when it approved the construction plans-- and because the prior fence was eight feet high. My client also had no reason to doubt the Town when she was told that she did not even need a permit for the wall. Second, as to government intent, it was clearly intended that my client rely on the Town's approval of the plans in building out the property, which she did. The wall alone was more than \$160,000 including new drainage that the neighbors requested. So my client detrimentally relied on the Town's representations and approval of her plans. Third, as to the public interest, there is no harm to the public interest in letting the wall remain; indeed, there is a public benefit. This is an exceptional case in which relief is warranted by the facts and the law.

In addition, there are the cases of *Pettitt v. City of Fresno* (1973) 34 Cal.App.3d 813 and *Driscoll v. City of Los Angeles* (1967) 67 Cal.2d 297.

*Driscoll v. City of Los Angeles* (1967) 67 Cal.2d 267

//  
//

Issue

Whether the City was estopped from asserting a statute of limitations on pensioner's widow's claims and whether the widows had detrimentally relied upon advice from the City.

Facts

The City of Los Angeles' charter provided for the payment of a fluctuating death benefit pension as distinguished from a fixed pension to the widow of a deceased pensioner provided only that she was married to him for at least one year prior to his death. This provision was amended in 1925 to provide "that no widow of a pensioner shall be entitled to a pension unless she shall have been married to such pensioner at least one year prior to the date of his retirement." Fixed pensions were also substituted for fluctuating pensions. The appellant widows met the requirements under the prior charter but not the amended charter and their husbands had worked for the City prior to 1925. The City conceded that applying the amended charter to the widows was unconstitutional but the City argued the claims were barred by the relevant statute of limitations. Some of the widows had inquired as to whether they were eligible for the pensions and were told by the City they were ineligible for any type of pension. Due to the good faith advice from the City, the widows did not file claims. Upon a ruling changing the eligibility of widows regarding the pensions, the Widows filed suit.

Holding

The court affirmed the trial court's judgment granting limited recovery to appellant widows and reversed as to appellants who were not entitled because the court failed to find the conduct intended to induce action, the ignorance of the true state of facts on the part of the parties asserting estoppel, and, particularly, the reliance by said parties upon such conduct to their injury.

Discussion

The record showed that the representatives of the City acted in good faith in advising plaintiffs concerning the applicable law as they understood and believed it to be. They advised the widows as to the legal effect of the statutory provisions as applied to plaintiffs, rather than merely to inform plaintiffs as to the content of the pertinent provisions. The widows relied upon the advice given them and believed that it was intended in their best interests. The court's reasoning recognized that errors do not always lead to estoppel but that it was a totality of the circumstances analysis. "The public agency is not estopped in every instance where its erroneous representation causes a claimant to fail to act diligently on his claim.... Upon examination the relevant circumstances may be grouped for convenience in two categories: those relating to the culpability

or negligence of the public agency or its representatives in their conduct or advice; and those relating to the seriousness of the impact or effect of such conduct or advice on the claimant.” *Driscoll v. City of Los Angeles* (1967) 67 Cal.2d 297, 306. “Where, however, the inaccurate advice or information is negligently ascertained or given, the city’s conduct may then be deemed to be unreasonable. Thus, in *Tyra v. Board of Police etc. Comrs.*, the public agents advised a claimant that he was not entitled to a recovery because of a specific provision in a city charter, whereas there was in fact no such provision. The misrepresentation was held to have induced the plaintiff’s delay in presenting his claim and to have estopped the defendants from asserting the bar of the statute.” *Driscoll v. City of Los Angeles* (1967) 67 Cal.2d 297, 307. “Other factors which may bear on the degree of negligence or culpability of the public agency are whether and to what extent it is certain of the knowledge or information it dispenses, whether it purports to advise and direct or merely to inform and respond to inquiries, and, of course, whether it acts in bad faith. While conduct in bad faith may be culpable and hence unreasonable, it does not follow that good faith conduct excuses inaccurate information otherwise negligently given.” *Id.* at 307-308 (citations omitted) (italics added).

This case applies to our situation as well, because the representations and approvals made by the Town were at best negligent. It is simply unfair for the Town to come in *after the property has been built* and hold up final approvals because of its own negligence.

*Pettitt v. City of Fresno* (1973) 34 Cal.App.3d 813

Issue

Whether a municipality can be estopped to deny the validity of a building permit issued in violation of a zoning ordinance.

Facts

The plaintiffs bought a building in an area zoned single-family residential. The building had two parts and two addresses, and each part had a different permitted nonconforming use, one for multiple residential, and the other for retail commercial. The plaintiffs applied for and received a building permit from the city that showed both addresses and erroneously authorized alterations to make the entire space commercial. The plaintiffs made some of the alterations, but the two parts of the building remained separate. The city issued a temporary certificate of occupancy and approved the work that had been done so far. Later, the plaintiffs finished the alterations, joining both parts of the building into a single commercial space. Two years later, a building inspector noted the additional work and demanded that the plaintiffs obtain a permit for it. After trying unsuccessfully to do so, the plaintiffs sought a writ

of mandate. The trial court found that (1) the plaintiffs had bought the building in reliance on the city's erroneous written representation that both addresses had a nonconforming right of use of retail commercial and (2) they had spent money in reliance on the building permit authorizing use of the entire space for a commercial use. For those reasons, the court estopped the city from claiming that the initial permit violated the original zoning designation for part of the building and was invalid. On appeal, the court reversed. Citing similar cases where courts had declined to estop the government, the court concluded as a matter of law that the city could not be estopped from challenging "the validity of a permit or other representations respecting the use of property issued or made in violation of the express provisions of a zoning ordinance.

### Holding

The Court held, as a matter of law, the city could not be estopped to deny the validity of a permit or other representation respecting the use of property, issued or made in violation of the express provisions of a zoning ordinance.

### Discussion

The Court noted municipal code provisions prohibiting the expansion of a nonconforming use into any other portion of a building or structure and prohibiting conversion of a residential use to a commercial one. The Court cited the principle that estoppel will not be invoked against a government agency where it would defeat the effective operation of a policy adopted to protect the public, and it concluded that the field of zoning laws involves a vital public interest. Permitting the violation to continue, the court reasoned, would give no consideration to the interest of the public in the area nor to the strong public policy in favor of eliminating nonconforming uses and against expansion of such uses. The Court rejected cases cited by Plaintiff, focusing on the validity of the permit when issued, "The facts in each of these cases show that the building permit was a valid permit when issued, and in reliance thereon the permittee acted to his detriment; the court stated the principle that the agency could not thereafter revoke the permit or change the zoning, being barred by the doctrine of estoppel from doing so. It is, of course, a wholly different situation when the permit is invalid from the beginning because issued in violation of the zoning law for the area." *Pettitt v. City of Fresno* (1973) 34 Cal.App.3d 813, 824.

This case is different from ours because the permit and approvals were *valid* when issued. To the extent the plans were in variance with the Town's ordinances and codes, the Town implicitly approved a variance when it approved the plans. To hold otherwise would be unfair considering that my client incurred millions of dollars building the home in reliance on the approval of the plans, which included the wall.

**Conclusion**

I would also like to incorporate by reference the architect's comments attached as Attachment 23. It is unclear whether the wall height runs from the grade on the builder's side or the grade on the opposite side, or both (or the average of the two).

We have presented a case for granting the variance because the Town knew of the wall height, footing, grade differences, and other aspects of the wall when the Town approved the plans in 2020. It's now two years later and the home is ready for approval at a cost of millions of dollars. It is unfair to hold up approval/final inspection due to the wall height issue, which in any case can be accommodated with a two foot-high planter box on the neighbors' property. Challenging the Town's decision in court will cost half a million dollars of taxpayer money, and tearing out the wall and rebuilding it is a drastic solution that would be extremely costly as well. For the reasons indicated, we are asking you to reconsider the denial of the variance and grant the variance.

We would like to note that the Town is holding my client's substantial deposit of \$220,000 and we need it returned once the wall issue is resolved through this appeal.

Sincerely,

*Andrew G. Watters*

Andrew G. Watters, Esq.

**VERIFICATION**

I, Weina Yu, certify:

I have read the foregoing appeal and the same is true of my own personal knowledge, except as to those matters stated on information and belief, in which case I believe them to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: May 19, 2022

/s/  
\_\_\_\_\_  
Weina Yu

**Conclusion**

I would also like to incorporate by reference the architect's comments attached as Attachment 23. It is unclear whether the wall height runs from the grade on the builder's side or the grade on the opposite side, or both (or the average of the two).

We have presented a case for granting the variance because the Town knew of the wall height, footing, grade differences, and other aspects of the wall when the Town approved the plans in 2020. It's now two years later and the home is ready for approval at a cost of millions of dollars. It is unfair to hold up approval/final inspection due to the wall height issue, which in any case can be accommodated with a two foot-high planter box on the neighbors' property. Challenging the Town's decision in court will cost half a million dollars of taxpayer money, and tearing out the wall and rebuilding it is a drastic solution that would be extremely costly as well. For the reasons indicated, we are asking you to reconsider the denial of the variance and grant the variance.

We would like to note that the Town is holding my client's substantial deposit of \$220,000 and we need it returned once the wall issue is resolved through this appeal.

Sincerely,  


Andrew G. Watters, Esq.

**VERIFICATION**

I, Weina Yu, certify:

I have read the foregoing appeal and the same is true of my own personal knowledge, except as to those matters stated on information and belief, in which case I believe them to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: May 19, 2022

Weina Yu  
Weina Yu

## Attachment List

Attachment #1: A former employee's written testimony

Attachment #2: civil engineer and Town officer's emails

Attachment #3: the Town's 7/7/20 email

Attachment #4: the Town's 2/2/21 formal email

Attachment #5: the photo of original fence (8ft tall)

Attachment #6: 2/6/19 email and wall design

Attachment #7: 2/19/19 email and wall design

Attachment #8: wall's structure design

Attachment #9: 15 Isabella's 8/24/19 text

Attachment #10: 15 Isabella's 9/25/19 text

Attachment #11: 15 Isabella's 11/23/19 email

Attachment #12: the fixed wood fence

Attachment #13: 15 Isabella's 2/26/20 email

Attachment #14: 15 Isabella's 2/29/20 email

## ATTACHMENT 1

Attachment #15: the 4/10/21 judgement

Attachment #16: the 6/22/21 judgement

Attachment #17: 5/4/21 emails between 15/25 Isabella

Attachment #18: 5/19/21 and 6/8/21 emails between 15/25 Isabella

Attachment #19: 9/15/2021 written notice from the Town

Attachment #20, the photo of soil mark at 15 Isabella side

Attachment #21, Civil engineer's letter dated 2/11/2016 to the planning dept.

Attachment #22, 1/30/2020 email about repair quotes

To Whom It May Concern:

My name is Desiree Benavides. From September 2019 to June 2021, I worked as Ms. Yu's assistant to assist her in dealing with matters related to the 25 Isabella project. Regarding the Town' handling of the 15/25 Isabella wall in the year 2020, the following are the facts I know:

1. On 5/27/2020 morning, Adam Sanders (the inspector in Building Department) visited the wall and expressed his concerns about the as-built grading along the wall (soil on this side of the wall was 2 feet higher than that of the neighbor), the wall's height, and the possible flood in the future. He asked us to have our civil engineer contact the Town to find solutions.

On that day, Ms. Yu and I were both on site to meet with Mr. Sanders. Mr. Sanders first inspected the Pool house, then he checked the wall and expressed his concerns above.

2. On 6/8/2020 morning, David Huynh (the inspector in Public Department ) and Monica Diaz (the officer in Police Department ) visited the wall and expressed their concerns about the wall's height, the as-built grading along the wall, the possible flood, and the retaining wall issue. They asked me to have our civil engineer reach out to the Town to find solutions.

On that day, I was the only one who met them on site. Mr. Huynh came first, then he inspected the driveway and expressed his concerns. Ten minutes later, Ms. Diaz arrived. The two of them checked the wall together and expressed their concerns above. Ms. Diaz also asked me to tell Ms. Yu to call her.

3. In their conversations with me, all the 3 officers mentioned that the as-built grading along the wall was different from the civil plans which had

been approved by the Town. And they all knew that the soil on this side was 2 feet higher than that of the neighbor.

4. We reported all above officers' concerns to our civil engineer Karla Castro, and we gave her the 3 officers' names and telephone numbers. A couple weeks later, we were told that she has reached out to the Town, and the solutions that the Town gave her were to update the civil plans to reflect the as-built grading, to design a drainage along the wall, and to resubmit the updated civil set for formal approval.

I certify that the above statements are true. If this matter will go through litigation in the future, I am willing to testify in court.

Sincerely,  
Desiree Benavides

*Desiree Benavides*

*04.22.22*

**ATTACHMENT 1**  
**Attachment #2****RE: We need to revise grading & drainage plan at 25 Isabella**

3 messages

Karla Castro &lt;kcastro@leabraze.com&gt;

Tue, Jun 2, 2020 at 4:49 PM

To: Nana Y &lt;nana0008@yahoo.com&gt;

Cc: Pete Carlino &lt;pcarlo@leabraze.com&gt;, Cooper Allison &lt;callison@leabraze.com&gt;, 25 Isabella Ave &lt;25isabellaave@gmail.com&gt;

Hi Weina,

Thank you for the quick call this afternoon to go over our project at 25 Isabella Ave., Atherton, CA.

As I mentioned during our call we will need for the original surveyor (info below) to provide additional grade shots along the new wall. See attached markup. L&B can then update our plans to reflect the new as built grades and new drainage design along the property line per the town inspector's request.

Macleod &amp; Associated, Inc.

650-593-8580

965 Center St.

San Carlos, Ca

Job #4176-TOPO

Let me know if you have any questions.

Best,

**Karla Castro, P.E**

Civil Design Engineer, L.S.I.T

**Lea & Braze Engineering, Inc**

Civil Engineers | Land Surveyors

HAYWARD • ROSEVILLE • DUBLIN • SAN JOSE (Coming Soon!)

WWW.LEABRAZE.COM

Phone: 510-887-4086 x.162

Email: KCastro@leabraze.com



**ATTACHMENT 1**

**RE: 25 Isabella**

From: Karla Castro (kcastro@leabraze.com)  
To: dmacleod@macleodassociates.net; nana0008@yahoo.com  
Date: Monday, June 22, 2020, 09:52 AM PDT

Hi Dan,

Happy Monday! Hope you had a great weekend.

Thank you for helping us pull together the additional information!

Weina – we will begin updating our site plan to address the town's concerns.

Let me know if you have any questions in the meantime.

Best,

**Karla Castro, P.E**

**Civil Design Engineer, L.S.I.T**

**Lea & Braze Engineering, Inc**

**Civil Engineers | Land Surveyors**

**HAYWARD • ROSEVILLE • DUBLIN • SAN JOSE**

Phone: 510-887-4086 x.162

Email: [KCastro@leabraze.com](mailto:KCastro@leabraze.com)

[LinkedIn](#) | [Instagram](#) | [Facebook](#)

-----Original Message-----

From: Dan Macleod <dmacleod@macleodassociates.net>  
Sent: Monday, June 22, 2020 8:26 AM  
To: Nana Y <nana0008@yahoo.com>  
Cc: Karla Castro <kcastro@leabraze.com>  
Subject: RE: 25 Isabella

Hi Weina,

The elevation plan is attached.



**ATTACHMENT 1**

Regards,

Dan G. MacLeod, P.E., P.L.S.

MacLeod and Associates, Inc.

965 Center Street

San Carlos, CA 94070

650-593-8580 Ext. 101

fax 650-593-8675

## ATTACHMENT 1

RE: 25 Isabella

From: Karla Castro (kcastro@leabraze.com)  
 To: nana0008@yahoo.com  
 Date: Tuesday, June 23, 2020, 04:10 PM PDT

Hi Weina,

David Huynh, the Public Depart inspestor

Confirmed, essentially what he is saying is that we will need to resubmit our updated civil set to the city for formal approval.

I have attached our updated site plan; which incorporates the new area drains, and swales, along the North wall per new topo grades. We have also updated the set to include revised drainage at the driveways per David's last concern as well.

I will actually be in the area tomorrow, for a meeting in Los Altos Hills, I know it is a bit short notice but I can swing by the site to discuss the revised grading plan if your available.

I am available between 10:30am - 11:30am or after 12:30pm. Let me know if tomorrow works for you, as well, or we can do a later date as well.

Best,  
 Karla Castro, P.E  
 Civil Design Engineer, L.S.I.T  
 Lea & Braze Engineering, Inc  
 Civil Engineers | Land Surveyors  
 HAYWARD \* ROSEVILLE \* DUBLIN \* SAN JOSE  
 Phone: 510-887-4086 x.162  
 Email: [KCastro@leabraze.com](mailto:KCastro@leabraze.com)  
 LinkedIn | Instagram | Facebook

-----Original Message-----

From: Nana Y [mailto:[nana0008@yahoo.com](mailto:nana0008@yahoo.com)]  
 Sent: Monday, June 22, 2020 2:46 PM  
 To: Karla Castro <[kcastro@leabraze.com](mailto:kcastro@leabraze.com)>  
 Subject: 25 Isabella

Hi Karla,

Thank you for your quick response!

David the inspector mentioned we need to revise our G & D permit. Does that mean grading and drainage permit? If so, please let me know when the revisions are completed, so we can set up a meeting on site.

Best,  
 Weina  
 650-862-8880

Sent from my iPhone

**ATTACHMENT 1**



2151121 Isabella Ave. 2020-06-22.pdf  
11.9MB



**ATTACHMENT 1**

25 Isabella Ave &lt;25isabellaave@gmail.com&gt;

**25 Isabella Ave (Permit #: BP16-00138)**

David Huynh &lt;DHuynh@ci.atherton.ca.us&gt;

Tue, Jun 30, 2020 at 2:54 PM

To: Karla Castro &lt;kcastro@leabraze.com&gt;

Cc: Adam Sanders &lt;asanders@ci.atherton.ca.us&gt;, 25 Isabella Ave &lt;25isabellaave@gmail.com&gt;, Cooper Allison

&lt;callison@leabraze.com&gt;, Pete Carlino &lt;pcarlino@leabraze.com&gt;

Karla,

Please put these on the civil plans set. G&D must be revise along with the driveway encroachment permit and submit them to the town.

**David Huynh, P.E.**

PW Maintenance Manager/Senior Engineer

650-752-0555

**From:** Karla Castro <kcastro@leabraze.com>**Sent:** Tuesday, June 30, 2020 1:27 PM**To:** David Huynh <DHuynh@ci.atherton.ca.us>**Cc:** Adam Sanders <asanders@ci.atherton.ca.us>; 25 Isabella Ave <25isabellaave@gmail.com>; Cooper Allison <callison@leabraze.com>; Pete Carlino <pcarlino@leabraze.com>**Subject:** RE: 25 Isabella Ave (Permit #: BP16-00138)

[The e-mail below is from an external source. Please do not open attachments or click links from an unknown or suspicious origin.]

Hi David,

Thank you for the follow up.

The surveyor was able to pick up as-built grade shots at the new driveway approaches (as part of the verifying of grade shots at the North wall and driveways. See attached elevation shots provided by the project surveyor.

I have also included a couple of civil markups to highlight the limits of the new asphalt swale. These as built shots show that the intent of the design was maintained with flow at a minimum of .5% at both asphalt swales.

Does the attached as-built information from the project surveyor sufficiently address the towns concerns? Please let me know if you have any other questions.

## ATTACHMENT 1

Best,

**Karla Castro, P.E.****Civil Design Engineer, L.S.I.T****Lea & Braze Engineering, Inc****Civil Engineers | Land Surveyors****HAYWARD • ROSEVILLE • DUBLIN • SAN JOSE**

Phone: 510-887-4086 x.162

Email: [KCastro@leabraze.com](mailto:KCastro@leabraze.com)[LinkedIn](#) | [Instagram](#) | [Facebook](#)

---

**From:** David Huynh [<mailto:DHuynh@ci.atherton.ca.us>]**Sent:** Thursday, June 25, 2020 5:10 PM**To:** Karla Castro <[kcastro@leabraze.com](mailto:kcastro@leabraze.com)>**Cc:** Adam Sanders <[asanders@ci.atherton.ca.us](mailto:asanders@ci.atherton.ca.us)>; 25 Isabella Ave <[25isabellaave@gmail.com](mailto:25isabellaave@gmail.com)>; Cooper Allison <[callison@leabraze.com](mailto:callison@leabraze.com)>; Pete Carlino <[pcarlino@leabraze.com](mailto:pcarlino@leabraze.com)>**Subject:** RE: 25 Isabella Ave (Permit #: BP16-00138)

The swale along the driveway approach was not constructed as a concrete valley gutter. New asphalt swale will need to be survey to verify that the flow is correct.

**David Huynh, P.E.**

PW Maintenance Manager/Senior Engineer

650-752-0555

---

**From:** Karla Castro <[kcastro@leabraze.com](mailto:kcastro@leabraze.com)>**Sent:** Thursday, June 25, 2020 1:18 PM**To:** David Huynh <[DHuynh@ci.atherton.ca.us](mailto:DHuynh@ci.atherton.ca.us)>**Cc:** Adam Sanders <[asanders@ci.atherton.ca.us](mailto:asanders@ci.atherton.ca.us)>; 25 Isabella Ave <[25isabellaave@gmail.com](mailto:25isabellaave@gmail.com)>; Cooper Allison <[callison@leabraze.com](mailto:callison@leabraze.com)>; Pete Carlino <[pcarlino@leabraze.com](mailto:pcarlino@leabraze.com)>**Subject:** 25 Isabella Ave (Permit #: BP16-00138)

[The e-mail below is from an external source. Please do not open attachments or click links from an unknown or suspicious origin.]

Hi David,

Happy Thursday! Hope you have been well during this time.



ATTACHMENT 1

I wanted to follow up with you regarding our project at [25 Isabella Avenue](#). I understand you and your staff have been to site (during separate occasions) and had expressed concern regarding the drainage along the Northern Wall and driveway.

After an initial L&B site visit, to visually inspect the areas of concern, we had the project surveyor come out to the site to retrieve as built conditions of the grade and hardscape (at the driveway) to update our drainage plan accordingly. We have now updated our civil grading and drainage plan (Rev. 6 dated 6-24-20 – see attached) to incorporate new swales and area drains at the North wall and added a catch basin off the driveway to remove drainage from the immediate area. The new grade shots along the new carport and garage confirm that water is flowing away from the face of buildings and towards our break line to a new catch basin as shown on C-2.0.

The new grade shots at the auto courtyard also confirm that water is pitching from the center outwards toward the newly installed slot drains along the North and South ends of the courtyard.

Let us know if you have any questions – I am available by phone to discuss. Otherwise, if everything looks acceptable from your end we can resubmit our package with the town for formal approval.

Best,

**Karla Castro, P.E**

Civil Design Engineer, L.S.I.T

**Lea & Braze Engineering, Inc**

Civil Engineers | Land Surveyors

**HAYWARD • ROSEVILLE • DUBLIN • SAN JOSE**

Phone: 510-887-4086 x.162

Email: [KCastro@leabraze.com](mailto:KCastro@leabraze.com)

[LinkedIn](#) | [Instagram](#) | [Facebook](#)

**ATTACHMENT 1**

Fwd: 25 Isabella Ave (Permit #: BP16-00138)

From: 25 Isabella Ave (25isabellaave@gmail.com)  
To: nana0008@yahoo.com  
Date: Tuesday, April 26, 2022, 08:45 AM PDT

----- Forwarded message -----

From: **Karla Castro** <kcastro@leabraze.com>  
Date: Wed, Jul 1, 2020 at 4:32 PM  
Subject: RE: 25 Isabella Ave (Permit #: BP16-00138)  
To: David Huynh <DHuynh@ci.atherton.ca.us>  
Cc: Adam Sanders <asanders@ci.atherton.ca.us>, 25 Isabella Ave <25isabellaave@gmail.com>, Cooper Allison <callison@leabraze.com>, Pete Carlino <pcarlino@leabraze.com>

Hi David,

I have attached our revised civil set which includes the as-built topo. shots. We also updated our grade callouts to reflect the as-built elevations per your email below. See attached.

Please let me know if you have any other questions or if this set addresses all of the towns concerns. I will be uploading the plan set tomorrow morning for formal review and approval by the town for both the G&D plan and encroachment permit.

Thank you for your help, patience and quick responses!

Best,

**Karla Castro, P.E.**

**Civil Design Engineer, L.S.I.T**

**Lea & Braze Engineering, Inc**

**Civil Engineers | Land Surveyors**

**HAYWARD • ROSEVILLE • DUBLIN • SAN JOSE**

Phone: 510-887-4086 x.162



**ATTACHMENT 1**  
**Attachment #3****BP16-00138, 25 Isabella, Grading and drainage Revision 4**

7 messages

**Daniel Johnston** <djohnston@ci.atherton.ca.us>

Tue, Jul 7, 2020 at 3:44 PM

To: "kcastro@leabraze.com" &lt;kcastro@leabraze.com&gt;

Cc: "25isabellaave@gmail.com" &lt;25isabellaave@gmail.com&gt;, Michael Greenlee &lt;mgreenlee@ci.atherton.ca.us&gt;, Joe Cyr &lt;jcyr@ci.atherton.ca.us&gt;, Joseph Zigabarra &lt;jzigabarra@ci.atherton.ca.us&gt;

Hello,

The Permit BP16-00138 at 25 Isabella for the Grading and drainage Revision 4 has been approved and is ready to issue subject to the following:

- Please print and submit 2 copies of any final plans and 2 copies of any final supporting documents that were submitted online for final stamping and approval.
- Submit the field set of plans for slip sheeting
- Contractor will need to obtain a Town of Atherton Business License if not already completed.
- A letter of authorization to sign for a permit is required for anyone other than the person listed as the contractor with CSLB.

There are \$594.00 of fees due at this time, all fees must be paid in cash or check only at time of permit issuance

Office counter hours are Monday through Friday 8 to 11 am and 1 to 4 pm excluding holidays.

*Daniel Johnston*

*Town of Atherton*

*150 Watkins Ave*

*Atherton, CA 94027*

*Main: (650) 752-0560*

*[djohnston@ci.atherton.ca.us](mailto:djohnston@ci.atherton.ca.us)*

**PUBLIC DISCLOSURE NOTICE:**

This email and any attached files were sent from an email account assigned to a public official for the Town of Atherton. This email, replies to this email, or emails sent directly to this email account may constitute a public record and, if retained during the normal course of business, may be subject to disclosure to any person upon request.

## Wall/Fence - 25 Isabella

---

From: Monica Diaz (mdiaz@ci.atherton.ca.us)  
To: nanayu88@icloud.com; nana0008@yahoo.com  
Cc: asanders@ci.atherton.ca.us; jgarcia@ci.atherton.ca.us; SBertollo-Davis@ci.atherton.ca.us; mgreenlee@ci.atherton.ca.us  
Date: Tuesday, February 2, 2021, 06:29 PM PST

---

Hi Weina,

I hope you're doing well. First, I apologize for the delays in getting back to you regarding the pending fence/wall issues. I was out of the office for an extended period of time, which caused things to get backed up. You were not forgotten, and we want to help move things along as best we can.

After further discussion and research by staff, it has been determined there are two (2) corrective actions available for you. These are the same as previously discussed:

1. Repair any wall/fence defects; and
2. Fence height reduction in order to comply with the code's maximum height allowance of six (6) feet. This may cause a need for additional screening in order to resolve the hold; or,
3. Contact Planning Department staff to explain the wall/fence height exists beyond what is allowed by code (~8 feet), and seek entitlement through a Variance.

Since our last meeting, we had conversations with the other parties involved to discuss the options allowed by code as remedies to the violation. They are aware of the options outlined above and were also made aware the choice of corrective action would be up to you. It's important to note the corrections noted above are the minimum required in order to resolve the pending hold on your final inspection.

Staff has worked to resolve disputes and has been fairly successful in the past. With that being said, we cannot take sides. We can only follow the code and our guidelines. I am happy to facilitate a meeting with your neighbors and you, but please understand the discussion would have to be limited to the wall/fence issue. While you may have other disputes with your neighbors, those would have to be left out of any fence/wall resolution talks. Let me know how you'd like to proceed.

**ATTACHMENT 1**

Thank you,

Monica Diaz, CCEO

CSO/Code Enforcement Officer

**Town of Atherton | Department of Police**

**83 Ashfield Road Atherton, CA 94027**

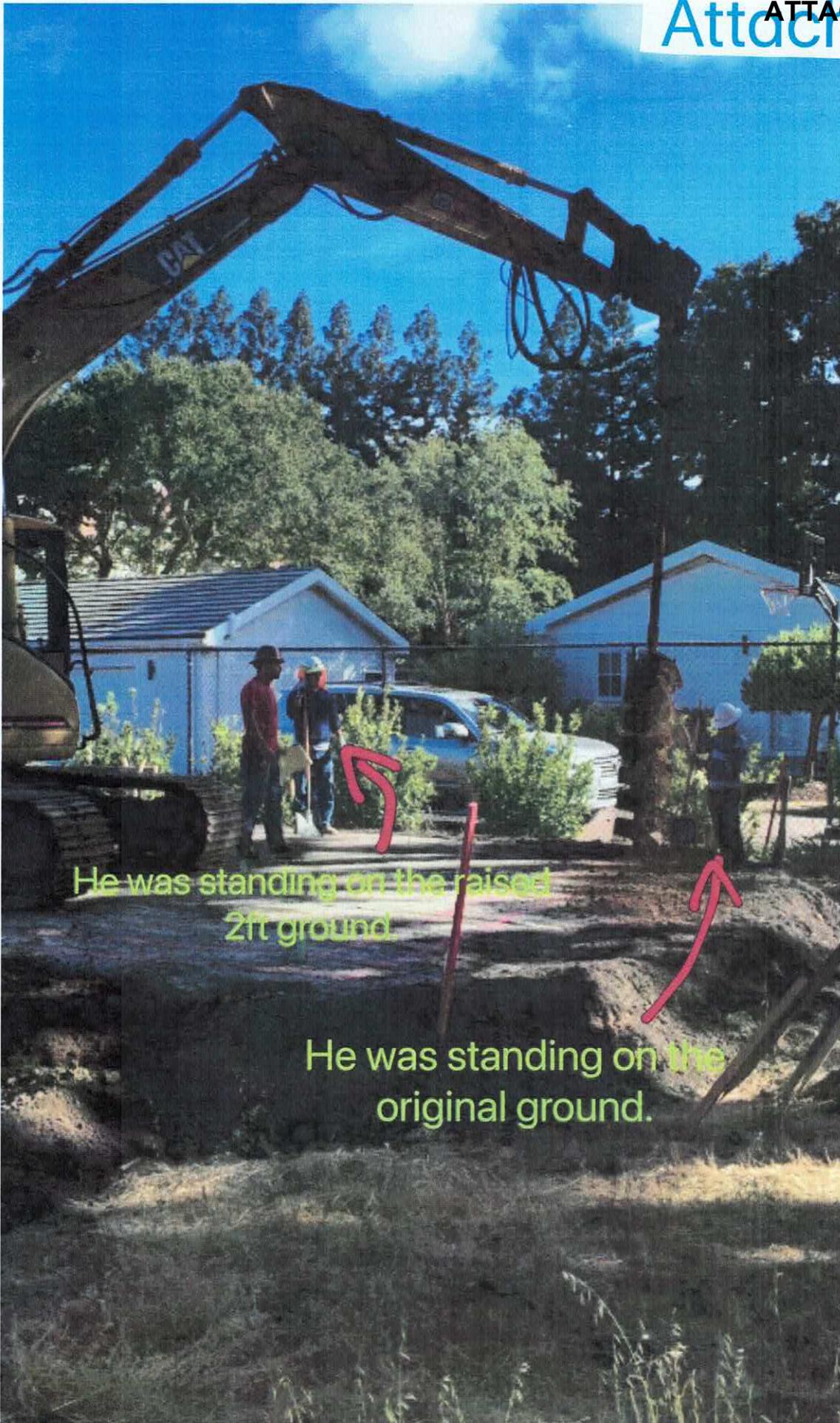
**Tel. (650) 752-0553 | Cell. (650) 743-3107 | Fax (650) 323-1804**

<http://www.ci.atherton.ca.us/>



ADVISORY & CONFIDENTIALITY NOTICE: This email, including any attachments, is for the sole use of the intended recipient(s) and may contain confidential and privileged information. Any unauthorized review, use, disclosure, or distribution is prohibited. If you receive this transmission in error please discard it.

# ATTACHMENT 1 Attachment #5



He was standing on the raised  
2ft ground.

He was standing on the  
original ground.



fence between 15 Isabella and 25 Isabella

---

From: Nana Y (nana0008@yahoo.com)

To: a@wilburproperties.com

Date: Wednesday, February 6, 2019, 10:05 PM PST

---

Hi Ann,

Thank you for contacting me this evening.

As you know, we have been doing new home construction at 25 Isabella in the last two and half years. Hopefully the new home can be completed by the end of May.

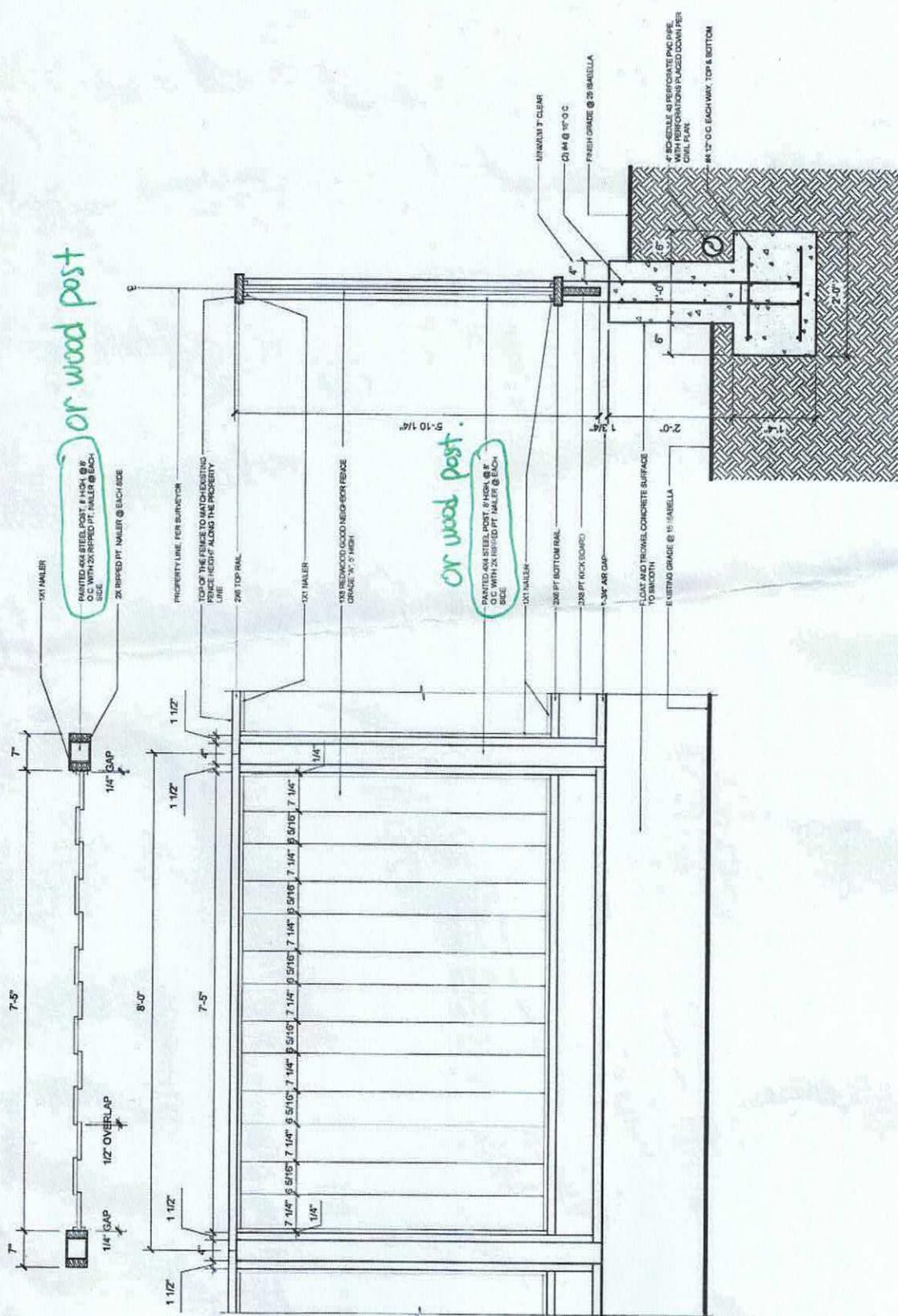
We would like to redo the fence between 15 Isabella and 25 Isabella since the current fence is lack of privacy.

My architect has designed the new fence as the attached drawing shows. Basically architect designed it in the same height with the current fence.

Please feel free to contact me if there is any question.

Thank you Ann!  
Weina  
650-862-8880

 scan0003.pdf  
168.1kB



or wood post

or wood post

FENCE SECTION

FENCE ELEVATION @ 15 ISABELLA, ATHONTON

1 GOOD NEIGHBOR FENCE  
SCALE: 1/2"=1'-0"

2

Fence for 15 Isabella & 25 Isabella

From: Nana (nana0008@yahoo.com)  
To: a@wilburproperties.com  
Cc: Hongwei161@gmail.com  
Date: Tuesday, February 19, 2019, 07:36 PM PST

Hi Anne,

Thank you for talking with us on the phone this morning.

We understand my neighbors' concerns, and would like to improve the fence design. I heard that my neighbors would like to have the fence at their side looks unified. If my neighbors like, we can make an 8' tall stucco fence, although construction cost for stucco will be much higher than wood. We would like to do that because we think it is important for the fence to look very nice from my neighbors' yard, and we hope my neighbors will like it.

Please feel free to contact Hong or me for any question.

Thank you very much Anne and Hong!  
Weina  
650-862-8880

On Tue, Feb 19, 2019 at 6:38 PM Anne Wilbur <a@wilburproperties.com> wrote:

Thank you, Hong.  
I will discuss this with the owners and get back to you.

Anne

**Anne K. Wilbur, CPM**

**Broker and Owner  
Wilbur Properties, LP**

**790 High Street**

**Palo Alto, CA 94301**

Direct - 650.847.4347

Cell - 415.559.5557

Efax - 866.304.9603









R



Rose Hau

Aug 4, 2019, 11:24

Hi Weina,

Just wanted to touch base with you:

We wanted to confirm your anticipated fence completion date is still August 25. i

Also, can you confirm that you will be putting in drainage along the fence - it's hard to tell right now.

Have a good day.  
Thank you - Rose

Rose,

We had installed drainage along the fence before the fence new construction was started. At this moment the drainage system is covered by soil.

My construction manager Dimitri is having a vacation, he will be back 8/12. He can show you the drainage system and explain details to you.



Rose Hau



Rose,

We had installed drainage along the fence before the fence new construction was started. At this moment the drainage system is covered by soil.

My construction manager Dimitri is having a vacation, he will be back 8/12. He can show you the drainage system and explain details to you.

I asked contractor about fence completion date, he said he would have a better idea after concrete is poured this week. I will update to you.

Thank you. You have a good day too.  
Weina

Thanks for all the updates - we greatly appreciate your responsiveness.

Rose



Rose Hau

Sep 25, 2019, 09:07

Hi Rose,

The concrete block contractor said he would complete the stucco wall today.

Will you or your Management company have time to stop by, to check and inspect the wall? After that this contractor will get his final payment.

Thanks,  
Weina



Rose Hau



Sep 25, 2019, 14:43

Rose, have you got an idea what time the property manager may come?

The wall contractor is very impatient and antsy.

It sounds like a terrible situation. If it helps, I can assure you now that we will have no problem with the stucco fence itself. We are concerned about the cleanup, possible damage to the asphalt, and restoring the planting strip along the fence including the sprinkler pipes.

We immediately contacted the property manager - will let you know when we hear.

Rose

15 Isabella, Atherton

From: Anne Wilbur (a@wilburproperties.com)

To: nana0008@yahoo.com

Date: Saturday, November 23, 2019, 04:02 PM PST

Hi Weina,

I am sorry it has taken so long to obtain estimates for all the repairs that are required as a result of the damages caused by your contractor at 15 Isabella. The items and amounts are as follows:

- 1. Repair 14 feet of the back fence. \$1,580.00
- 2. We asked our landscaper to handle the following items:

- \* Remove approximately 30 cubic yards of soil that has been piled up along the new fence. Re-grade planters along the driveway and prepare for mulch installation. Install two zones of drip irrigation. Install approximately 40 cubic yards of mulch (along the fence and areas where the tractor tore into the planters along the driveway and at the back of the property.

Total \$11,440.00

- 1. Repairs to paving:
  - \* Remove and replace about 360 s.f.

Of concrete pavers

- \* Clean asphalt driveway and apply crack Filler over cracks larger than 1/2" wide; Apply two coats of sealcoat with 2% Latex and sand over 4,750 s.f.

Total \$17,260.00

**ATTACHMENT 1**

Grand Total

\$30,280.00

These estimates do not include: replacing the plants that were planted along the driveway where the new fence was installed; power washing the garage walls that have concrete splashes; repairing the left front lawn that has truck or car tire tracks; or removing the excess mastic below the tiles that cap the fence. We will handle these last items for the owners.

I am sorry that these expenses are so high. The major expense is for repairing the asphalt that was damaged by your contractor's heavy construction equipment and vehicles.

Please let me know if you have any questions.

Yours truly,

Anne

Anne K. Wilbur, CPM

Broker and Owner  
Wilbur Properties, LP

790 High Street

Palo Alto, CA 94301  
Direct - 650.847.4347

Cell - 415.559.5557

Efax - 866.304.9603

Email - [a@wilburproperties.com](mailto:a@wilburproperties.com)<mailto:[a@wilburproperties.com](mailto:a@wilburproperties.com)>

BRE License: 00823559

790 High Street  
Palo Alto, 94301-0128  
[www.wilburproperties.com](http://www.wilburproperties.com)<<http://www.wilburproperties.com/>>

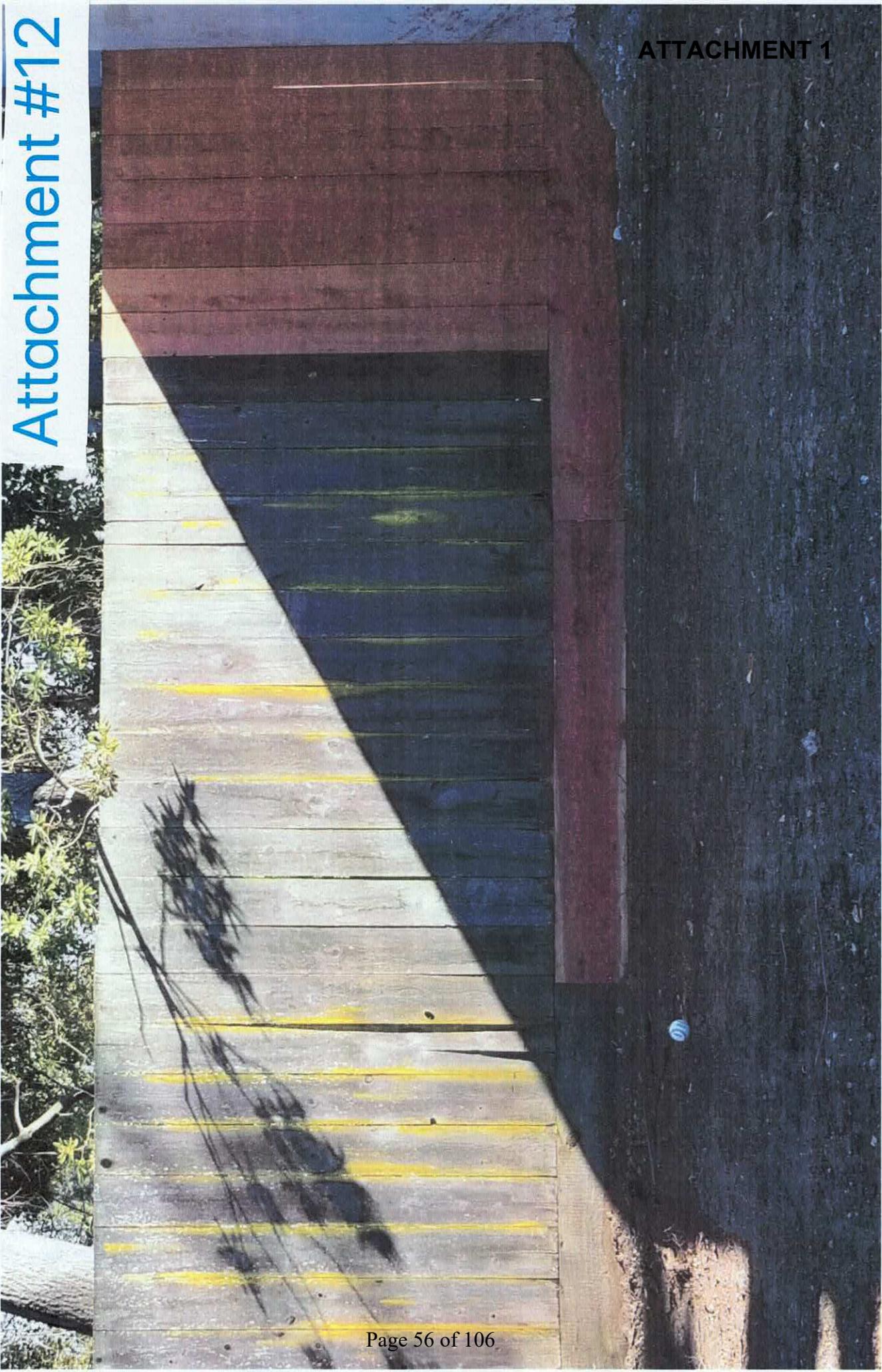


winmail.dat

69.2kB

Attachment #12

ATTACHMENT 1





15 Isabella - Please do not repair the asphalt until further notice

---

From: Anne Wilbur (a@wilburproperties.com)

To: nana0008@yahoo.com

Cc: jheslin@wsgr.com; rhauaia@aol.com; andy@wilburproperties.com; justin@wilburproperties.com; johnw@wilburproperties.com

Date: Wednesday, February 26, 2020, 04:16 PM PST

---

Hi Weina,

Thank you for repairing the back fence.

There are some additional issues that need to be addressed at 15 Isabella.

We noticed that when the dirt was removed that the bottom of the fence that is now exposed is not finished. The soil was hiding this issue. The fence has some cracks already and photos of the unfinished fence and the cracks are attached to this email. The equipment that was used to remove the dirt has caused damage in a few places. This is also shown in the photos. These issues need to be addressed.

A more serious problem is that the planting area has been reduced to a very narrow strip next to the fence and our concern is drainage issues that may arise as a result of this. This was caused by placement or thickness of the fence and the footing. Therefore any asphalt work should be postponed until we have decided how to address this potential drainage issue on our side. Please do not have any asphalt work done until we have addressed this issue.

Thank you for your cooperation. Please let me know if you have any questions.

## ATTACHMENT 1

Anne

### **Anne K. Wilbur, CPM**

**Broker and Owner  
Wilbur Properties, LP**

**790 High Street**

**Palo Alto, CA 94301**

Direct - 650.847.4347

Cell - 415.559.5557

Efax – 866.304.9603

Email - [a@wilburproperties.com](mailto:a@wilburproperties.com)

RE: 15 Isabella - Please do not repair the asphalt until further notice

From: Anne Wilbur (a@wilburproperties.com)

To: nana0008@yahoo.com

Cc: jheslin@wsgr.com; rhauaia@aol.com; andy@wilburproperties.com; justin@wilburproperties.com; johnw@wilburproperties.com

Date: Saturday, February 29, 2020, 03:21 PM PST

Hi Weina,

We all met at the property yesterday and it is our belief that you are not aware of the flaws in the design and construction of the footing. In part this is because there was soil mounted on top of the footing that disguised its placement and crude finish. When the surplus soil was removed it revealed that the footing is situated either at or only slightly below the level of the driveway. It probably should have been submerged below grade permitting soil and some form of drainage. The footing is also very crudely finished with jagged edges on the top and sides instead of the smooth finish one would expect to see. Of course, if it had been submerged under ground level then the finish would not have mattered. The most concerning issue is that the placement, thickness and design of the footings provide for no drainage along the side yard and driveway leading to the garage and beyond. This is especially evident in the area next to the garage. On account of this we plan to hire an expert to suggest a drainage system to work with the footings that have been installed.

The method that was used for removing the surplus soil only exacerbated the drainage issue. There was heavy equipment utilized that compacted the soil too much not to mention the damage that it caused to the fence itself. The soil condition is compacted so tightly that it is no longer suitable for planting. As you may recall there were plants and an irrigation system along the fence before the new fence was constructed.

**ATTACHMENT 1**

The condition of the fence is not acceptable as mentioned in my email on February 27<sup>th</sup>. The soil was mounted about 8 to 12 inches above the footing and when the color and finish were applied to the fence, the area behind the soil was not treated. Therefore, when the surplus soil was removed it exposed bare areas at the bottom of the fence that need to be colored and finished.

We will contact you once we have an solution to the drainage problem. At that time we will invite you to see the condition of the footings and the fence. Given the quality of the work performed by your contractors we do not wish to have your contractors perform any more work on our side of the fence. The owners expect to be fully compensated not only for the asphalt repair but also for remedial work that will be required to correct the problems that have been caused by work performed by your contractors.

Our employee visited the site on a regular basis during the period of time that your contractors occupied our property because we manage this property for the owners and his job was to monitor events at the property. There was no opportunity or authority for him to give any comments or feedback to your contractors about their work. Therefore he had no influence on their work.

Thank you for your cooperation.

Anne

**Anne K. Wilbur, CPM**

**Broker and Owner  
Wilbur Properties, LP**

**790 High Street**

**Palo Alto, CA 94301  
Direct - 650.847.4347**

**Cell - 415.559.5557**

Name and Address of Court  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SANTA CLARA  
191 North First Street  
San José, California 95113

SC-130

SMALL CLAIMS CASE NO.: 20SC083924

**NOTICE TO ALL PLAINTIFFS AND DEFENDANTS:**  
Your small claims case has been decided. If you lost the case, and the court ordered you to pay money, your wages, money, and property may be taken without further warning from the court. Read the back of this sheet for important information about your rights.

**AVISO A TODOS LOS DEMANDANTES Y DEMANDADOS:**  
Su caso ha sido resuelto por la corte para reclamos judiciales menores. Si la corte ha decidido en su contra y ha ordenado que usted pague dinero, le pueden quitar su salario, su dinero, y otras cosas de su propiedad, sin aviso adicional por parte de esta corte. Lea el reverso de este formulario para obtener información de importancia acerca de sus derechos.

PLAINTIFF/DEMANDANTE (Name, street address, and telephone number of each)

**Pedro Paulo Ribeiro**  
PO Box 390029  
MOUNTAIN VIEW CA 94039

Telephone No:

DEFENDANT/DEMANDADO\* (Name, street address, and telephone number of each)

**Waina Yu**  
25 Isabella Ave  
ATHERTON CA 94027

Telephone No:

Telephone No.

Telephone No.

See attached sheet for additional plaintiffs and defendants

Date of Hearing: October 20, 2020

Hearing officer: Christine Copeland

**NOTICE OF ENTRY OF JUDGMENT**

Judgment was entered as checked below on ~~10/20/2021~~ **OCT 20 2020**

1.  **Defendant (name, if more than one): Waina Yu shall pay plaintiff (name, if more than one): Pedro Paulo Ribeiro \$10,000.00 principal and: \$115.00 costs on plaintiff's claim. TOTAL \$10,115.00**
2.  Defendant does not owe plaintiff any money on plaintiff's claim.
3.  Plaintiff (name, if more than one): Pedro Paulo Ribeiro shall pay defendant (name, if more than one): Waina Yu \$ principal and: \$ costs on defendant's claim.
4.  Plaintiff does not owe defendant any money on defendant's claim
5.  Possession of the following property is awarded to plaintiff (describe property):
6.  Payments are to be made at the rate of: \$ per (specify period): beginning on (date) and on the (specify day): day of each month thereafter until paid in full. If any payment is missed, the entire balance may become due immediately.
7.  Dismissed in court  with prejudice.  without prejudice
8.  Attorney-Client Fee Dispute (Attachment to Notice of Entry of Judgment) (form SC-132) is attached.
9.  Other (specify):
10.  This judgment results from a motor vehicle accident on a California highway and was caused by the judgment debtor's operation of a motor vehicle. If the judgment is not paid, the judgment creditor may apply to have the judgment debtor's driver's license suspended.
11. Enforcement of the judgment is automatically postponed for 30 days or, if an appeal is filed, until the appeal is decided.
12.  This notice was personally delivered to (insert name and date):
13. CLERK'S CERTIFICATE OF MAILING—I certify that I am not a party to this action. This Notice of Entry of Judgment was mailed first class, postage prepaid, in a sealed envelope to the parties at the addresses shown above. The mailing and this certification occurred at the place and on the date shown below.

Place of mailing: San Jose, California

Date of mailing: 4/10/2021

Clerk, by Melanie Bueno, Deputy

The county provides small claims advisor services free of charge. Read the information sheet on the reverse.

<b>SUPERIOR COURT OF CALIFORNIA COUNTY OF SANTA CLARA</b>	<b>FILED</b> Date: <u>6-22-21</u> REBECCA FLEMING Chief Executive Officer Clerk Superior Court of CA County of Santa Clara
PLAINTIFF/RESPONDENT: Pedro Paulo Ribeiro COUNSEL: N/A ADDRESS: PO Box 390029 Mountain View, CA 94039	By: <u>J. Morriss</u> J. Morriss, Deputy
DEFENDANT/APPELLANT: Weina Yu COUNSEL: N/A ADDRESS: 25 Isabella Ave Atherton, CA 94027	
<b>JUDGMENT AFTER TRIAL DE NOVO FROM JUDGMENT OF THE SMALL CLAIMS COURT</b>	CASE NUMBER: 21-SC-085151

**NOT REPORTED**

CLERK: J. Morriss

An Appeal from a JUDGMENT of the SMALL CLAIMS COURT OF SANTA CLARA COUNTY LIMITED COURT, STATE OF CALIFORNIA, duly came on for hearing before HONORABLE SUNIL KULKARNI, Judge of the Superior Court, in Courtroom No. 22 on 06/15/2021.

Appellant  APPEARED  DID NOT APPEAR  BY/WITH COUNSEL.  
and Respondent  APPEARED  DID NOT APPEAR  BY/WITH COUNSEL.

Evidence having been adduced and the cause argued and submitted to the Court for decision, it is ORDERED, ADJUDGED, AND DECREED that judgment is rendered, as follows:

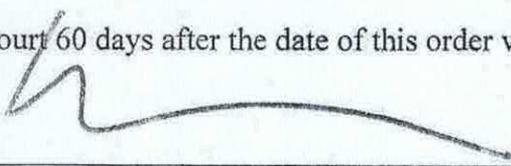
Plaintiff/Respondent (Mr. Ribeiro) shall recover from Defendant/Appellant (Ms. Yu) \$7500 plus \$115 in costs for a total judgment of **\$7615**.

Exhibits are ordered returned to the presenting party.

OTHER: On the record, Defendant/Appellant waived her fictitious name and contractual privity arguments, and asked the Court to decide the matter on the merits.

Exhibits remaining in the custody of the clerk of the court 60 days after the date of this order will be destroyed.

Dated: 6/17/21

  
\_\_\_\_\_  
SUNIL KULKARNI, JUDGE OF THE SUPERIOR COURT

**NOTICE OF ENTRY OF JUDGMENT and CERTIFICATION OF MAILING**

I certify that I am not a party to this action, and that a true copy of this Judgment was served by first class mail, postage prepaid, addressed as shown above and mailed on the date shown below. Notice is hereby given that judgment in the above entitled matter was entered pursuant to CCP 668.5 on the date shown below.

REBECCA FLEMING, CHIEF EXECUTIVE OFFICER/CLERK

Dated: 6-22-21

By J. Morriss Deputy  
J. Morriss

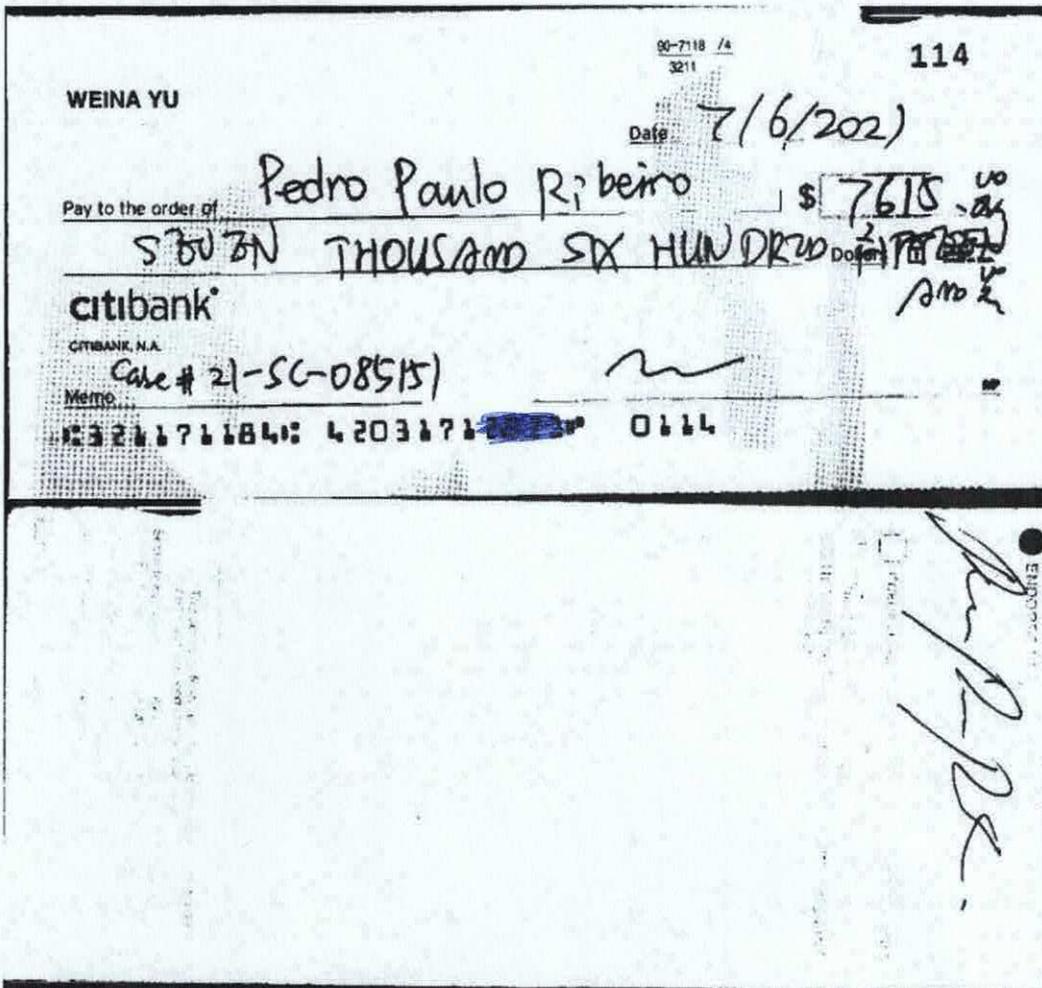


ATM/Debit Card: XXXX-XXXX-XXXX-4158

As of 07-13-2021 11:54 EDT

### Check Details

Account	Check #	Post Date	Amount
Checking-2823	114	2021-07-12	\$ 7615.00



15 Isabella - Fence

---

**From:** Anne Wilbur (a@wilburproperties.com)

**To:** nana0008@yahoo.com

**Date:** Tuesday, May 4, 2021, 08:34 AM PDT

---

Dear Weina,

Hopefully this email finds you and your family well. I am writing to you on behalf of the owners of 15 Isabella who want me to let you know that they are willing not to raise objections with the City of Atherton in regard to the fence between your property and theirs if an agreement can be reached on measures you will undertake to correct damage to the property caused by the prior construction as well as defects in the present fence.

You and I have already discussed remediation measures and I will summarize where the matter was left when we last exchanged emails:

- Restore soil and irrigation in the planting area along the length of the fence.
- Repair the asphalt driveway and slurry seal it – the owners will cover 50% of the cost
- Install mulch in the planting area and between the house and the driveway. Per my previous email to you the area was freshly mulched within six months of the construction of the new fence.
- The brick pavers at the end of the driveway were also damaged and need to be reset.
- Remove or repair the exposed unfinished footing of the fence
- Repair damage and cracks to the fence and refinish if necessary after the repairs

Please let me know if you are agreeable to paying for these repairs.

Your cooperation is greatly appreciated.

Sincerely yours,

Anne

# ATTACHMENT 1

## Anne K Wilbur, CPM

Partner and Broker

DRE# 00823559 | Cell 415.559.5557 | Main 650-847-3800

Email [A@WilburProperties.com](mailto:A@WilburProperties.com) | Website [www.WilburProperties.com](http://www.WilburProperties.com)

The best way to reach me is by cell phone or email.



**ATTACHMENT 1**

Re: 15 Isabella - Fence

---

From: Nana Y (nana0008@yahoo.com)

To: a@wilburproperties.com

Date: Tuesday, May 4, 2021, 05:56 PM PDT

---

Hi Anne,

Thank you for reaching out to me.

In February, we received an official email from the Town, which was cced to the Planning Department, the Building Department, the Public Department, and the Police Department, etc.

In that email, they mentioned:

"After further discussion and research by staff, it has been determined there are two (2) corrective actions available for you. These are the same as previously discussed:

1. Repair any wall/fence defects; and
2. Fence height reduction in order to comply with the code's maximum height allowance of six (6) feet. This may cause a need for additional screening in order to resolve the hold; or,
3. Contact Planning Department staff to explain the wall/fence height exists beyond what is allowed by code (~8 feet), and seek entitlement through a Variance.

Since our last meeting, we had conversations with the other parties involved to discuss the options allowed by code as remedies to the violation. They are aware of the options outlined above and were also made aware the choice of corrective action would be up to you. "

According to the instructions of the above email, our architect, Young & Borlik Architects has been preparing the documents to do the Variance process for us. In the Town's email, they did mention "The process takes time, especially now with all the challenges created by the COVID pandemic."

On the other hand, in the Town's February and March emails, they mentioned they would arrange a 3-party meeting for us (15 Isabella, 25 Isabella, and Ms. Diza from the Police Department) to discuss the wall issue.

Since the Town had been involved in this matter, I don't think we should have any more private discussions. I have let the Town know, I'd be happy to meet with you and the Police Department on site. My schedule is quite full this week and next week, but now I can arrange to meet you and Ms. Diaz any time after May 18th.

## ATTACHMENT 1

Please just let me know a couple of your convenient meeting times, so I can make an appointment with Ms. Diaz. Thank you.

Sincerely,  
Weina  
650-862-8880

wall repair

---

From: Nana Y (nana0008@yahoo.com)

To: a@wilburproperties.com

Cc: 25isabellaave@gmail.com; weinayu001@gmail.com

Date: Wednesday, May 19, 2021, 02:19 PM PDT

---

Hi Anne,

It was nice meeting you this morning.

Attached are the 3 documents we have given to you. Two of them were for the lawsuit between the contractor and me, the other one was for the Letter to Town. If 15 Isabella owners agree to our repair plan, they will need to sign on the "Letter to Town" after the repairs are done.

According to our conversation this morning, for the wall itself, 15 Isabella owners wanted us to do the following 3 things, let's call it Plan A:

- (1) Fix stucco cracks
- (2) Plants along the wall
- (3) Irrigation for plants along the wall

I mentioned I was thinking to do the following 3 things for the wall, let's call it Plan B:

- (1) Fix stucco cracks
- (2) Install stucco to exposed footing
- (3) Paint the entire wall

If the owners of 15 Isabella insist on their original plan, which was Plan A, I can do that, just need their permission for the contractor and me to enter their property for an estimate.

If the owners of 15 Isabella prefer to do Plan B, we will also need their permission for the contractor and me to enter their property for an estimate.

I can do either Plan A or Plan B, but not both.

For the rest of 15 Isabella owners' claims such as the asphalt, the paver, the mulch, etc., as I mentioned to you this morning, the contractor had presented his evidence to the judge, showed that he didn't cause any damage to 15 Isabella's asphalt, paver, mulch, etc., and the judge agreed with him.

# ATTACHMENT 1

Please let me know if you have any questions. Thank you.

Weina  
650-862-8880

 BRWE86F385A91F2\_000437.pdf  
765.8kB

 BRWE86F385A91F2\_000440.pdf  
265kB

 BRWE86F385A91F2\_000476.pdf  
94.6kB

## ATTACHMENT 1

RE: wall repair

---

From: Anne Wilbur (a@wilburproperties.com)

To: nana0008@yahoo.com

Cc: 25isabellaave@gmail.com; weinayu001@gmail.com

Date: Thursday, June 3, 2021, 05:25 PM PDT

---

Hi Weina,

They do not agree with your position with regard to limiting your responsibility with regard to damages your workers caused on their property. As we have discussed previously, the issues are the asphalt repair, sunken paver stone area, restoring the soil and irrigation along the planting area adjacent to the fence and reinstalling mulch.

Best regards,

Anne

**Anne K Wilbur, CPM**

Partner and Broker

DRE# 00823559 | Cell 415.559.5557 | Main 650-847-3800

Email [A@WilburProperties.com](mailto:A@WilburProperties.com) | Website [www.WilburProperties.com](http://www.WilburProperties.com)

The best way to reach me is by cell phone or email.

### TOWN OF ATHERTON



CITY COUNCIL  
150 WATKINS AVENUE  
ATHERTON, CALIFORNIA 94027  
(650) 752-0500

September 15, 2021

Weina Yu  
25 Isabella Avenue  
Atherton, CA 94027

Thank you for submitting a Variance application to the Planning Commission on May 12, 2021, associated with a prior code enforcement case #2020-0078 for consideration of the construction of an 8 foot tall (as-built) fence/wall along the shared property line at 25 Isabella and 15 Isabella Avenue.

#### Current Code Violations

Upon evaluation of the Variance application materials submitted, and further assessment by staff to gather facts for this Variance application, the Town has discovered additional code enforcement issues at the property; specifically the following:

1. The existing 8-foot tall (as-built) fence/wall was constructed on top of an approximate (as-built) 2-foot tall retaining wall located on the shared property line between the 15 and 25 Isabella Avenue properties. Construction of such wall is in violation of Atherton Municipal Code (AMC) Section 17.46.030 (D) which requires retaining walls to be located a minimum of 5 feet from a property line.

and;

2. Section 17.46.030 (B) of the AMC defines fence height measurement to be taken from natural grade at the base of the fence to the uppermost part of the fence. Section 17.26.060 defines natural grade as the original condition of the ground surface as it existed prior to mechanical grading or disturbance. Staff notes that sometime in 2020, the overall site grade change to property occurred without formal approval by the Town. Following such, plans were submitted to and approved by the Town for a subsequent grading and drainage permit, however, these plans misrepresented original conditions (i.e. plans did not reflect original topographic conditions of the property prior to any improvements or development occurring at the site in 2016 and instead included existing conditions of the lot reflecting the overall site grade change occurring sometime in 2020 that did not secure Town approval.)

It follows that, construction of a 6-foot (as-built) fence/wall on top of the approximate 2-foot tall retaining wall, resulting in an 8-foot tall fence/wall structure is:

- i. In violation of (AMC) Section 17.46.030 (D) which limits retaining walls not be any closer than five (5) feet from any property line.
- ii. In violation of (AMC) Section 17.46.030 (B) which limits fences to not exceed six (6) feet in height from natural grade.

All references to the AMC noted above can be found online:  
<https://www.codepublishing.com/CA/Atherton/>.

- Based on these current conditions, you are required to remediate the violations noted in Item 2(i) and (ii) above. Specifically, you shall remove the retaining wall constructed on the shared property line with 15 Isabella Avenue and the associated 6-foot fence/wall constructed on top of it, and remove the added soils that elevated the grade along the shared property line.

If you do not undertake this remediation within one hundred and twenty (120) days of the date of this letter, you will be subject to further Code Enforcement action per Chapter 1.21 of the AMC.

### Future Construction

If you chose to construct a new retaining wall, it must be constructed a minimum of five (5) feet from the property line pursuant to AMC Section 17.46.030 (D). You are responsible for securing all necessary permits and approvals from the Building Department and/or Public Works Division for this remedial work. Specifically:

- Construction of a new retaining wall will require a building permit if the total height of the retaining wall is greater than 48 inches, measured from the highest point of the proposed retaining wall to the bottom-most point of the foundation. [Application](#) for such building permit can be found online and construction documents shall include sufficient clarity to indicated the location, nature and extent of the work proposed show in detail that it will confirm to the provisions of 2019 California Building Code.

Construction of a new retaining wall will require a grading and drainage permit regardless of the height. [Application](#) for such grading and drainage permit and [grading and drainage checklist](#) can be found online. At this time, the AMC violations noted in this letter shall be addressed and the pending Variance application shall not be further processed by staff until such time as the Town has determined such violations have been addressed and subsequent determination if the Variance application is or is no longer applicable.

- Should you have any additional questions regarding the Zoning interpretations related to fence height or retaining wall placement, please contact the Planning Department, Stephanie Davis, at 650-773-7249, or [sbertollo-davis@ci.atherton.ca.us](mailto:sbertollo-davis@ci.atherton.ca.us).
- Should you have any questions about issuance of a building permit for new retaining wall construction, please contact the Building Division, Michael Greenlee, at 650-752-0560, or [mgreenlee@ci.atherton.ca.us](mailto:mgreenlee@ci.atherton.ca.us).
- Should you have any questions about issuance of a grading and drainage permit for new retaining wall construction, please contact the Department of Public Works, David Huynh, at 650-752-0555 or [dhynh@ci.atherton.ca.us](mailto:dhynh@ci.atherton.ca.us).

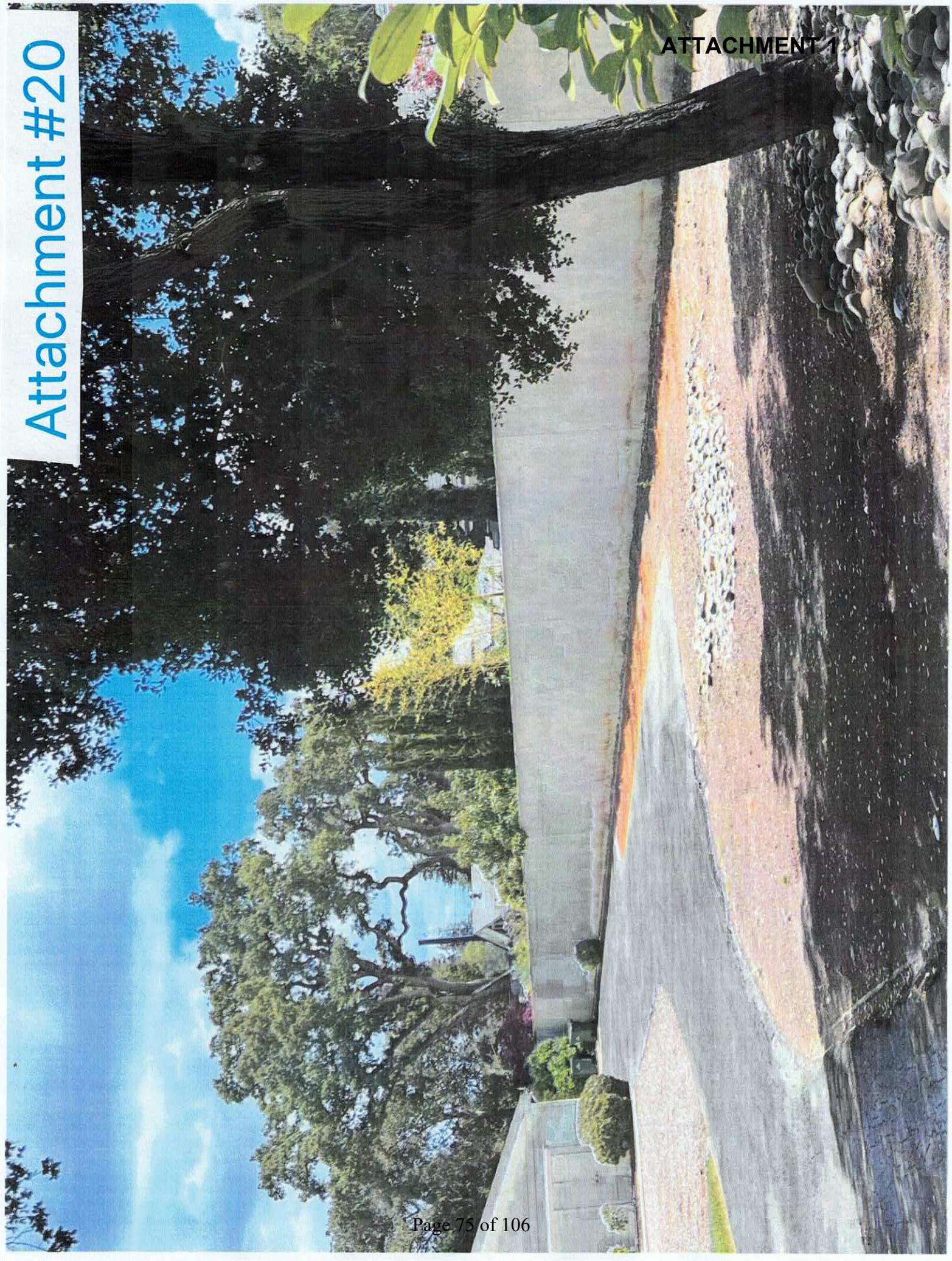
Further questions and follow up can be directed to Lisa Costa Sanders, Town Planner at 650-333-0248 or [lcostasanders@ci.atherton.ca.us](mailto:lcostasanders@ci.atherton.ca.us).

Sincerely,



Lisa Costa Sanders  
Town Planner

Cc: Town Attorney Office, City Manager, Department of Public Works, Building Department.





**Main Office:**  
2495 Industrial Pkwy West  
Hayward, CA 94545  
Ph: 510.887.4086  
Fx: 510.887.3019

**Sacramento Region**  
3017 Douglas Blvd. Ste. 300  
Roseville, CA 95661  
Ph: 916.966.1338  
Fx: 916.797.7363

Planning Department  
Town of Atherton  
91 Ashfield Road  
Atherton, CA 94027

February 11, 2016

Subject: Review of Average Natural Grade Determination  
25 Isabella Ave, Atherton, California  
LB# 2151121CI

To the Department:

Please consider this letter our assessment of the review of the base topographic information used for tabulation of the average natural grade pursuant to AMC section 17.42.030.A.2. for the subject property at 25 Isabella Ave in Atherton, California (APN: 070-250-250) for the construction of the main residence and accessory structures. MacLeod & Associates performed the survey for the subject property entitled "Topographic Survey Plan" dated 04-23-15. We have reviewed the exhibit prepared by Young & Borlick Architects entitled "Existing Site Plan" dated 12-10-15 and we can attest that the contours and grades shown in the exhibit represent:

*the original condition of the ground surface as it existed prior to mechanical grading or disturbance, and where the original condition of the ground surface cannot be determined, the approximate original condition of the ground surface of the site as can best be determined from record and survey data (interpolation through structures).*

Per AMC section 17.42.030.A.4, we performed a 100-year flood analysis on the subject property. Our analysis revealed that a portion of the lot might be subject to inundation with a pad elevation built at the average natural grade for the main residence, garage, and accessory buildings. The minimum floor elevation shall be a minimum of 12 inches above the top of bank per section 2.a.3 of the Town of Atherton Drainage criteria. We propose locating the building pad elevation at a minimum elevation of 97.32' (12" above top of bank elevation of 96.32').

Please contact me with any questions.

Best,

Peter Carlino, PE  
Principal, Civil Engineer



Fw: 15 Isabella, Atherton

From: Nana Y (nana0008@yahoo.com)

To: rhauaia@aol.com

Date: Thursday, January 30, 2020, 11:05 PM PST

Hi Rose,

Happy Chinese New Year.

After Christmas & New Year holiday, I had contacted different contractors for your property repair issue. Since many contractors are busy on new constructions, so far I just received asphalt estimate.

Yesterday I asked Anne to send me the price details for her estimates. This morning her assistant Justin emailed me. I forwarded his email to you, see his attachment.

Last year I have told you, Anne's proposal was way too high.

I have multiple commercial properties and multiple residential properties at Bay Area. I also have multiple properties at East Coast. Multiple management companies are working on my properties. I can tell if a construction proposal is fair.

6 years ago, San Jose Asphalt worked on a parking lot of my Los Gatos office building, they did a great job. They are licensed Asphalt contractor, and they are very honest persons. The owner Jerry Stanley and his son's business focus on Asphalt only.

According to Anne's proposal, total cost for asphalt work at front entry/driveway and back driveway will be:  $\$7780 + \$7990 = \$15,770$ . Total asphalt area  $4750 + 5500 = 10250$  Sf.

See attached San Jose Asphalt proposal. His total cost for filling cracks and slurry two coat is  $\$3400$ , only 20% of Anne's amount. Jerry's proposal shows, entire asphalt area should be 6049 Sf.

When Jerry stopped by to see the job, I asked him to figure out a proposal for your entire existing asphalt, since I was not sure where was the boundary for front driveway and back driveway. Anne mentioned I would be responsible for back driveway only, and you would split the cost with me.

You have a 1.25 Ac (55000 Sf) property. 10250 sf asphalt occupies almost 20% of your entire property (including easement). Do you have 20% asphalt at your property? Of course not. 10% sounds reasonable. See attached the satellite image from Google Map.

Thanks,

**ATTACHMENT 1**

Weina

P O Box 1531  
 Morgan Hill, Ca 95038  
 Ph. (408) 778-2959  
 Fax (408) 847-3171

**CONTRACT**  
 Submitted by  
**SAN JOSE ASPHALT**  
 Lic. No. 712835

**ATTACHMENT 1**  
 Date 1/30/20  
 Proposal #  
 Rep. Jerry Stanley

<b>Proposal Submitted To:</b>  Name Weina Address City Phone	<b>Job Location:</b>  Job name Address 15 isabella ave City Atherton C.A Start date
---	--

We hereby submit the following contract:

ITEM	DESCRIPTION	TOTAL
	To clean Driveway approx 6.049 sq ft To fill cracks with crack filler. To slurry seal approx 6.049 sq ft with Two kotes of sealer.	

All material is guaranteed to be as specified. All work to be completed in a workmanlike manner according to standard practices.  
 Any alterations or deviation from the above specifications involving extra costs will be executed only upon written order and will become an extra charge over and above the estimate.  
 All agreements contingent upon strikes, accidents, or delays

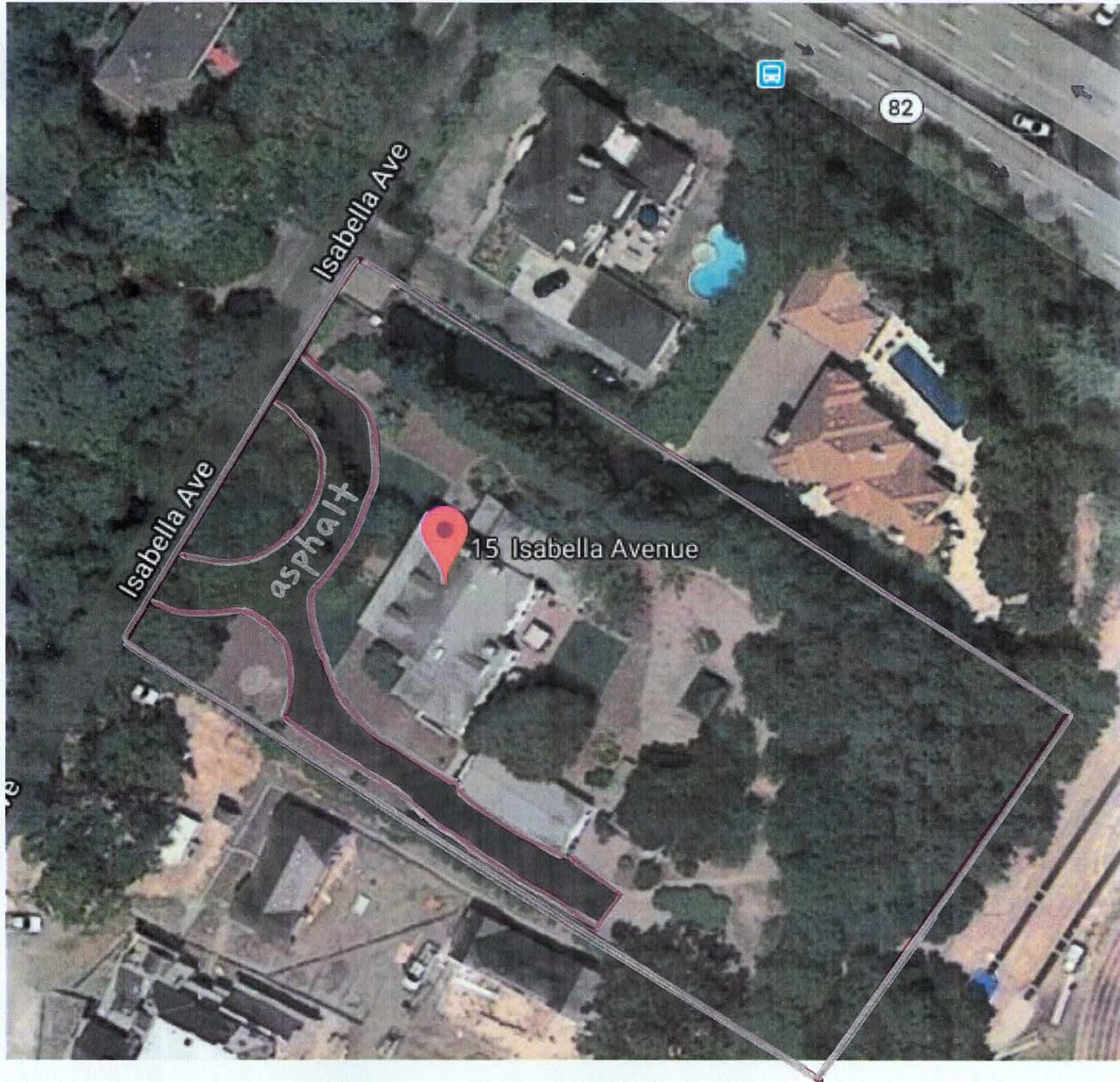
**Payment Details**  
 Total \$ 3,400.00  
 Deposit  
 Balance due upon completion

Authorized signature \_\_\_\_\_

**ACCEPTANCE OF CONTRACT**

The above prices, specifications and conditions are satisfactory, and are hereby accepted. You are authorized to do the work as stated. Payment will be made as outlined above.

Signature \_\_\_\_\_ Date \_\_\_\_\_  
 Please sign, date, and fax back upon approval



Good evening, Commissioners. My name is Steve Borlik. I'm representing the owners of 25 Isabella on a variance request. I know staff has spent a lot of time on this, and I want to acknowledge that, and thank them for the report. At first glance, I'm sure this looks like a difficult application. I want to show tonight you that there is a path to approval, and it can comply with an interpretation of the ordinances.

First of all, I'm sorry to see the opposition from 15 Isabella in the report. I believe I see them here. I did personally make an effort to reach out and discuss this application with them, but I was unable to get past the property manager so I didn't have the opportunity to speak with them directly. Part of the reason the wall today looks unfinished today is that this process required things to come to a stop. We have the owner of 25 here this evening as well.

The arguments against this variance point to code sections, and in some cases even suggest deliberate subversion. I don't believe there was any intent on the part of the owner of 25 to circumvent any part of the process. I wasn't involved in conversations or presentations between the property owners, but the accounts I've heard and read do vary in these details.

When grading plan revisions were requested by the town, they were submitted and approved. Following that approval, a significant investment was made in drainage features.

A small point - 7 and 8 foot tall fences are not totally unheard of in town. I don't want to point to any specific properties or get anybody in trouble, but I drove around the neighborhood this morning; I didn't do an exhaustive search, but I noted a half-dozen examples of taller fences in a pretty short time.

And I want to say this: with respect to the statement that the intent to preserve privacy is disingenuous. Lowering the top of the fence, in combination with lowering grade within 5 feet of the property line will do nothing to protect adjacent neighbors from longer range sight lines across the top of the fence. The privacy concern is real.

Another point is made that any hardship granted this property due to flooding conditions would apply to others along the channel, and I agree with that in a big way. These properties are unique in that regard. These border the Atherton Channel Drainage District, and are directly adjacent to the Atherton Channel.

But more than that, I want to point to several ordinances that conflict with those referenced in the materials here. And these relate specifically to fences and grade.

The fence ordinance section includes fences or walls. 17.46.010 says that:  
For the purposes of this zoning code, the term "fence" includes fences or walls.

Later, 17.60.020 says that the  
Definition of a "Fence" is a vertical screening structure used to prevent the ingress or egress of persons or animals or for the obstruction of vision or noise.

The biggest benefit to this fence is visual privacy.

The staff position notes that changes to the grade were caused by the owner, and that's true, however it's important to recognize that those changes to the pad elevation are specifically allowed under provisions for relief to flooding. In this case, the specified pad elevation was 97.32.

At the rear of these properties, that's pretty much two feet above the native grade.

Finally, what I think is the most pertinent part of this variance justification is actually written in the ordinance: Section 17.42.030 A.4 Height measurement.

And it reads: Upon submission of a civil engineer's report that finds a substantial portion of the buildable area of a lot is subject to inundation, the building pad can be raised up to one foot above the engineered flood level. The height of any building or structure placed on this raised pad shall be calculated from the new pad grade, rather than the previous existing grade. (and then it says this) **The addition of fill to the site shall not negatively impact the potential allowed height of any building or structure.**

So again, remember that Atherton's definition of a fence Definition of a "Fence" is a vertical screening structure used for the obstruction of vision or noise

While it's being stated that the property owner changed grade, the ordinance not only specifically allows that change, it also states that such change to the grade shall not negatively impact the height of any structure.

This plainly contradicts some of the other code references you've seen. And I believe an interpretation can easily be made that this fence height is supposed to be measured from the grade established by the height ordinance.

If not, what's being done is the raising up of interior and exterior areas, without regard to the consequence that privacy is being destroyed. Because a privacy fence can't do it's job if it's not raised with the rest of the pad.

This is the provision of the ordinance that says fill on a site subject to flooding shall not negatively affect the allowed height of any structure. The measurement of existing grade is allowed to be raised.

I thank you all for listening. I know you've stayed late. I appreciate the chance to present to you, and with that I will end my presentation. I am happy to take questions now or any time later in your discussion.

TOWN OF ATHERTON  
PLANNING COMMISSION APPLICATION



	TYPE OF APPLICATION	FEE
X	Appeal	\$814.79
	Special Structure Permit	\$2,822.82
	Conditional Use Permit	\$2,822.82
	Environmental Impact Report	Actual cost
	Final Parcel Map	\$2,822.82
	General Plan Amendment	\$5,428.50
	Heritage Tree Removal Permit / TPZ Exception	\$2,171.40
	Initial Review/Negative Declaration	\$2,171.40
	Lot Line Adjustment	\$1,628.55
	Lot Line Redesignation	\$2,822.82
	School Master Plan	\$814.79
	Tentative Parcel Map	\$2,822.82
	Variance	\$2,822.82
	Zoning Ordinance Amendment	\$5,428.50

SITE ADDRESS: 25 Isabella Ave APN: 070-250-250

Provide a brief description of the proposed project: \_\_\_\_\_

**PROPERTY OWNER:**

Name: T & W Sunny LLC  
 Mailing Address: 25 Isabella Ave, Atherton, CA 94027  
 Phone: 650-862-8880  
 Email: nana0008@yahoo.com  
**Signature:** Weina Yu

**APPLICANT:**

Name: \_\_\_\_\_  
 Mailing Address: \_\_\_\_\_  
 Phone: \_\_\_\_\_  
 Email: \_\_\_\_\_  
**Signature:** \_\_\_\_\_

.....  
FOR COMPLETION BY TOWN OF ATHERTON:

Amount Paid: \_\_\_\_\_ Received by: \_\_\_\_\_ Date Submitted: \_\_\_\_\_

Project #: \_\_\_\_\_

**PLANNING COMMISSION  
REGULAR MEETING  
APPROVED MINUTES**

**TOWN OF ATHERTON**

**March 23, 2022**

**6:00 pm**

*This meeting was held virtually.*

**1. ROLL CALL**

**PRESENT:** Eric Lane  
Nancy Lerner  
Perry Narancic  
Randy Lamb  
Gabia Konce

Town Planner Lisa Costa Sanders, Principal Planner Stephanie Bertollo-Davis, Assistant Planner Ralph Robinson, Town Arborist Sally Bentz-Dalton, Senior Engineer David Huynh and Deputy City Attorney Andreas Booher were present.

**2. PUBLIC COMMENTS**

No public comment made.

**3. APPROVAL OF MINUTES**

**MOTION to approve the minutes of the February 23, 2022 Planning Commission Meeting.**

**M/S Lamb/Narancic Ayes: 3 Noes: 0 Absent: 2**

**4. PUBLIC HEARING**

**a. Special Structures Permit (SSP) – 52 Fairview Avenue, Atherton (APN 070-162-010) – Request for a Special Structures Permit to allow for a detached accessory structure (shed) to have a reduced front yard setback. Atherton Municipal Code Chapters 17.15, 17.32, 17.40.**

Assistant Planner Ralph Robinson presented the staff report.

Open Public Hearing.

Project applicants Steve and Jennifer Jeffries, property owners at 52 Fairview, commented there is an existing hedge to screen shed from the neighboring property.

Closed Public Hearing.

Chair Lane commented that he visited the site, and it was evident that the structure would have no visual impacts on the right-of-way.

**MOTION to approve the Special Structures Permit to allow a detached accessory building (shed) to have the same front yard setback as the main residence at 52 Fairview Avenue based on the findings and for the reasons enumerated in the staff report, subject to the conditions listed in the Special Structures Permit certificate.**

M/S Lamb/Lane Ayes: 3 Noes: 0 Absent: 2

**b. Special Structures Permit (SSP) – 357 Walsh Road, Atherton (APN 074-130-220) – Request for a Special Structures Permit to allow for retaining walls greater than six (6) feet in height and less than twenty (20) feet from other retaining walls. Atherton Municipal Code Chapters 17.15, 17.32, 17.46.**

Assistant Planner Ralph Robinson presented the staff report.

Chair Lane noted that the site cut has already been made into the hillside. He asked if the drainage plan was adequately covered and whether it was normal for cuts to be made prior to approval of the retaining walls.

Assistant Planner Robinson verified extent of work done to the site so far, that a grading and drainage plan was approved prior to the excavation work, and that the project team was available on the call to speak further to the grading and drainage details.

Commissioners Lerner and Konce joined the meeting at 6:24pm.

Open Public Hearing.

Project representative Eric Greenblott stated that a drainage plan was approved. Cuts were made for the pool house and ADU and access around the structures. The soil has not been moved from the site. If the retaining walls were not approved, the soil would be put back. At the time of preparing the grading and drainage permit, applicant was not yet aware that the SSP was required, otherwise they would have applied for it prior to beginning the excavation work.

Closed Public Hearing.

Chair Lane noted that his questions were sufficiently answered by the applicant.

**MOTION to approve the Special Structures Permit to allow for retaining walls greater than six (6) feet in height and less than twenty (20) feet from other retaining walls at 357 Walsh Road based on the findings and for the reasons enumerated in the staff report, subject to the conditions listed in the Special Structures Permit certificate.**

M/S Lane/Lamb Ayes: 5 Noes: 0 Absent: 0

**c. Heritage Tree Removal (HTR) – 45 and 55 Melanie Lane, Atherton (APN 073-181-160 and 073-181-150) – Request for a Heritage Tree Removal (HTR) Permit for three (3) heritage redwood trees at 45 Melanie Lane and three (3) heritage trees at 55 Melanie Lane. Atherton Municipal Code Chapter 8.10.**

Principal Planner Stephanie Bertollo-Davis presented the staff report.

Chair Lane shared photos he took of the redwood trees during his site visit.

Commissioner Narancic asked if there was a report prepared by the Town Arborist.

Chair Lane read off the conclusions provided in the memo by the Town Arborist.

Commissioner Narancic asked if the probability of failure was the only basis for removal.

Town Arborist Sally Bentz-Dalton added it was a combination of there being no room for the trees to grow and damage already done to the property by the trees. The replacement trees should grow to a mature height of 60 feet.

Open Public Hearing.

Project Representative Stefan Thuilot, landscape architect, was present to answer questions from the Commission.

Project Representative Michael Young, project arborist, discussed proximity of trees to the wall and that the trees were not planted in that area with much foresight.

Closed Public Hearing.

Chair Lane said that he does not like to cut down redwoods but is comfortable with the application because of the site conditions.

**MOTION to find that the proposed removal of three heritage redwood trees (Tree #803, #805 and #807) at 45 Melanie Lane, Atherton, would not be contrary to the purpose and intent of the General Plan, for the reasons outlined in the Staff Report, and that the Commission approve the tree removals subject to the conditions listed in the draft Heritage Tree Removal Certificate.**

**M/S Narancic/Konce Ayes: 5 Noes: 0 Absent: 0**

**MOTION to find that the proposed removal of three heritage redwood trees (Trees #802, #804, #806) at 55 Melanie Lane would not be contrary to the purpose and intent of the General Plan, for the reasons outlined in the Staff Report, and that the Commission approve the tree removals subject to the conditions listed in the draft Heritage Tree Removal Certificate.**

M/S Narancic/Lamb Ayes: 5 Noes: 0 Absent: 0

**d. Tree Protection Zone (TPZ) Exception – 186 Atherton Avenue, Atherton (APN 070-070-130 – Request for Tree Protection Zone (TPZ) Exception for two (2) heritage oak trees. Atherton Municipal Code Chapter 8.10.**

Assistant Planner Ralph Robinson presented the staff report.

Chair Lane asked what is the difference in square footage between the current pool house and proposed ADU.

Assistant Planner Robinson noted the new ADU will be roughly 300 square feet larger.

Open Public Hearing.

Project Representative Jackie Terrell stated that existing house is out of date. Homeowners have a desire to update and improve design of buildings. Existing pool house is not centered on the pool. Every location on the property would place the ADU in the TPZ zones for heritage trees. Plan was created with minimizing impacts on the most impacted tree in mind.

Commissioner Konce asked whether pool house is more than one story.

Ms. Terrell stated the pool house and ADU are both one story.

Chair Lane asked if the new extent of the foundation was away from the trees.

Ms. Terrell added that the new foundation area is located in front of the ADU away from the trees.

Closed Public Hearing.

**MOTION to find the Exception to the Tree Protection Zone (TPZ) for two heritage trees, Tree #1 to 1.04 times (1.04x) the trees diameter and Tree #2 to 7.2 times (7.2x), associated with the construction of a proposed Accessory Dwelling Unit (ADU) at 186 Atherton Avenue would not be contrary to the purpose and intent of the General Plan for the reasons outlined in the Staff Report, and that the Commission approve the TPZ exception subject to the conditions as listed in the draft TPZ Exception Permit.**

M/S Lane/Lamb Ayes: 5 Noes: 0 Absent: 0

**e. Variance – 25 Isabella Avenue, Atherton (APN 070-250-250) – Request to allow for an eight (8) foot tall fence and construction of a retaining wall less than five (5) feet from a property line. Atherton Municipal Code Chapters 17.16, 17.32 and 17.46.**

Principal Planner Stephanie Bertollo-Davis presented the Staff Report.

Commissioner Narancic asked if the applicant wants to either treat the fence as an 8-foot fence or as a retaining wall.

Chair Lane noted that the Commission would have to grant the Variance for both the wall height and the location of the wall closer to the property line.

Principal Planner Davis clarified the application has two elements, both the location of the wall closer than 5 feet from the property line and the resulting height of 8 feet.

Commissioner Konce asked what the reasoning for the grading work was given that the lot is flat.

Chair Lane noted that the property at 25 Isabella was raised two feet in height during construction. The Commission is looking to get more understanding as to why. He added that he visited the site and took photos. He observed what appeared to be water damage on the lower part of the wall visible to 15 Isabella due to a potential drainage issue because of landscaping on the 25 Isabella side. He asked if the neighbors had provided any comment on that.

Principal Planner Davis said that issue had not been brought up, but that the homeowner at 15 Isabella is on the call and may speak to that during the meeting.

Open Public Hearing.

Project Representative Steve Borlik said there is a path to approval that satisfies the requirements of the Variance ordinance. He was sorry to hear about the opposition from the homeowner at 15 Isabella. He made an effort to reach out but was unable to connect with them. The wall looks unfinished at this point because work had to be stopped on the project. He does not think there was any effort by the owner at 25 Isabella to subvert the process or misrepresent their project. The owners submitted a revised grading and drainage plan that was approved by the Town. He stated his belief that lowering the top of the fence in combination with lowering the grade of the property will not do anything to protect privacy for the neighbors. Properties that border the Atherton Channel are unique in their depth below the flood level. Changes to the grade were done to raise the property above the flood elevation, resulting in a two-foot difference between average natural grade and the resulting grade. The Atherton Municipal Code chapter on building heights (17.42.030 A 4) allows for building pads to be raised above the flood level, with the height of structures to be measured from the new grade level above the flood level. His belief is that an interpretation can be made that the fence height may be measured from the new grade height allowed by the building height ordinance.

Chair Lane asked why there was a discrepancy in the fence height shown within the plans and the resulting fence height.

Mr. Borlik stated his understanding is that when the Town discovered the discrepancy, a new survey was ordered to reflect the new conditions on the site.

Chair Lane asked why, even if the plans were updated to accurately reflect the new grade of the property, there is the remaining issue of locating a retaining wall within five feet of a property line.

Mr. Borlik noted he was not involved in preparing that survey. His understanding is that Staff proposed for the applicant to taper the grade down to its original height at the edge of the property and reduce the fence height.

Commissioner Konce asked if there is a basement, or anything being constructed below grade.

Mr. Borlik stated that no below grade construction is included in the project.

Chair Lane asked Senior Engineer David Huynh why the original submittal was incorrect.

Senior Engineer David Huynh stated that the two-foot elevation difference in the original plans sloped down to the original grade at the property line. At some time, there was a change made to show the two-foot elevation change at the property line as existing grade and the change in the plans was not marked as a revision.

James Heslin, neighbor at 15 Isabella, stated that he was shown an original plan for a retaining wall eight feet in height, but the applicants were then told by the Town it could not be that height. He was surprised by the resulting height of the wall and the grade change. He went to speak with the Building Department and was told the project was in conflict with the Municipal Code. Mr. Heslin was then shown by the applicant a new fence design with no grade change and a resulting fence height of six feet. He stated his belief that the applicant violated a promise that was made regarding the proposed fence height. Dirt was originally placed on the 15 Isabella side of the fence to raise the grade, which he requested be removed. When the dirt was removed, it exposed the incomplete footings of the fence.

Rose Hau, neighbor at 15 Isabella, noted that the fence footings are at grade on her property. There is no dirt in place at the foot of the fence that would allow for landscape screening. She said that an implication was made by the applicant in a letter to neighbors that 15 Isabella approved of the project and that the project was to the benefit of 15 Isabella. This letter was not shared with 15 Isabella and Ms. Hau stated that the implication that was made is inaccurate. She stated that project has not gone smoothly and lasted more than twice the time that was promised and damaged her property.

Weina Yu, owner of 25 Isabella, said that two drawings, an architectural and a structural set, were provided to the neighbor at 15 Isabella. She was not informed by the Building Department about a potential violation at the time of the neighbor's complaint. She withheld payment from the contractor until the damage to the neighbor's property was fixed. She was then sued by the contractor and the determination was made by two judges as part of those suits that no damage was done to the neighbor's property. The neighbor at 15 Isabella has asked her for compensation.

Closed Public Hearing.

Commissioner Narancic asked what provision of the code says that raising the grade above the flood level does not impact the potential height of other structures.

Town Planner Lisa Costa Sanders said intent of this code section (17.42.030 A 4) is to raise the building pad of a main building if in a flood zone. It does not allow for raising the grade of the entire site.

Deputy City Attorney Andreas Booher stated that this code section relates to main structures, not walls and fences.

Town Planner Sanders added that the 5-foot setback requirement for retaining walls is so that ownership of the walls can be clearly delineated. This separation also gives an opportunity to lower grade heights to the existing grade level at the property line.

Commissioner Lamb said he has never seen a situation like this between neighbors. He stated that the applicant should be aware that the referenced code section on raising grade levels does not apply to raising the grade of an entire site.

Chair Lane stated that the inaccuracy of the submitted plans, not including the five-foot setback for the retaining wall, and the lack of capability to relieve the look of the fence on the 15 Isabella side demonstrate that the project should not have happened as it did.

Commissioner Konce added that she does not understand why the project was done as it was.

**MOTION to deny the Variance at 25 Isabella Avenue to allow for an eight (8) foot tall fence and construction of a retaining wall less than five (5) feet from a property line as all four of the required findings cannot be made as referenced previously during staff's presentation, and as further enumerated by the reasons incorporated in the staff report. The Planning Commission makes these findings based on the information contained in the staff report prepared for the March 23, 2022 Planning Commission meeting, the information presented by staff and the applicant presented during the March 23, 2022 meeting, and the public comments received by the Planning Commission at the March 23, 2022 meeting.**

**M/S Lamb/Lane Ayes: 5 Noes: 0 Absent: 0**

Principal Planner Davis noted that the decision may be appealed to the City Council per section 17.060.100 of the Atherton Municipal Code.

Commissioner Konce asked what result would be if appeal is denied.

Principal Planner Davis stated that this would proceed based on the procedures for code enforcement cases.

**5. STAFF REPORTS**

Principal Planner Davis noted that City Council had a first reading of the Historic Preservation Ordinance and requested that the Historic Preservation Ordinance be separated from the existing Historic Artifact Ordinance. That item will be going back to City Council for review of those revisions. A second reading of the SB 9 Ordinance was conducted and approved by the City Council.

Assistant Planner Robinson noted that the City Council will be moving to hybrid meetings. The Planning Commission also expressed their desire to move to a hybrid format beginning with the April 27, 2022 Planning Commission meeting.

The next regular meeting of the Planning Commission will be April 27, 2022.

**6. COMMISSIONERS' REPORTS**

Nothing to report.

**7. ADJOURN**

The meeting was adjourned 8:01 PM

Respectfully Submitted:

*/s/Ralph Robinson*

Ralph Robinson, Assistant Planner

**ATTACHMENT 5**



**Town of Atherton**  
**Planning Department**  
**80 Fair Oaks Lane**  
**Atherton, California 94027**  
**Phone: (650) 752-0544**  
**Fax: (650) 614-1224**

---

**TOWN OF ATHERTON**  
**CITY COUNCIL**  
**DRAFT VARIANCE CERTIFICATE**

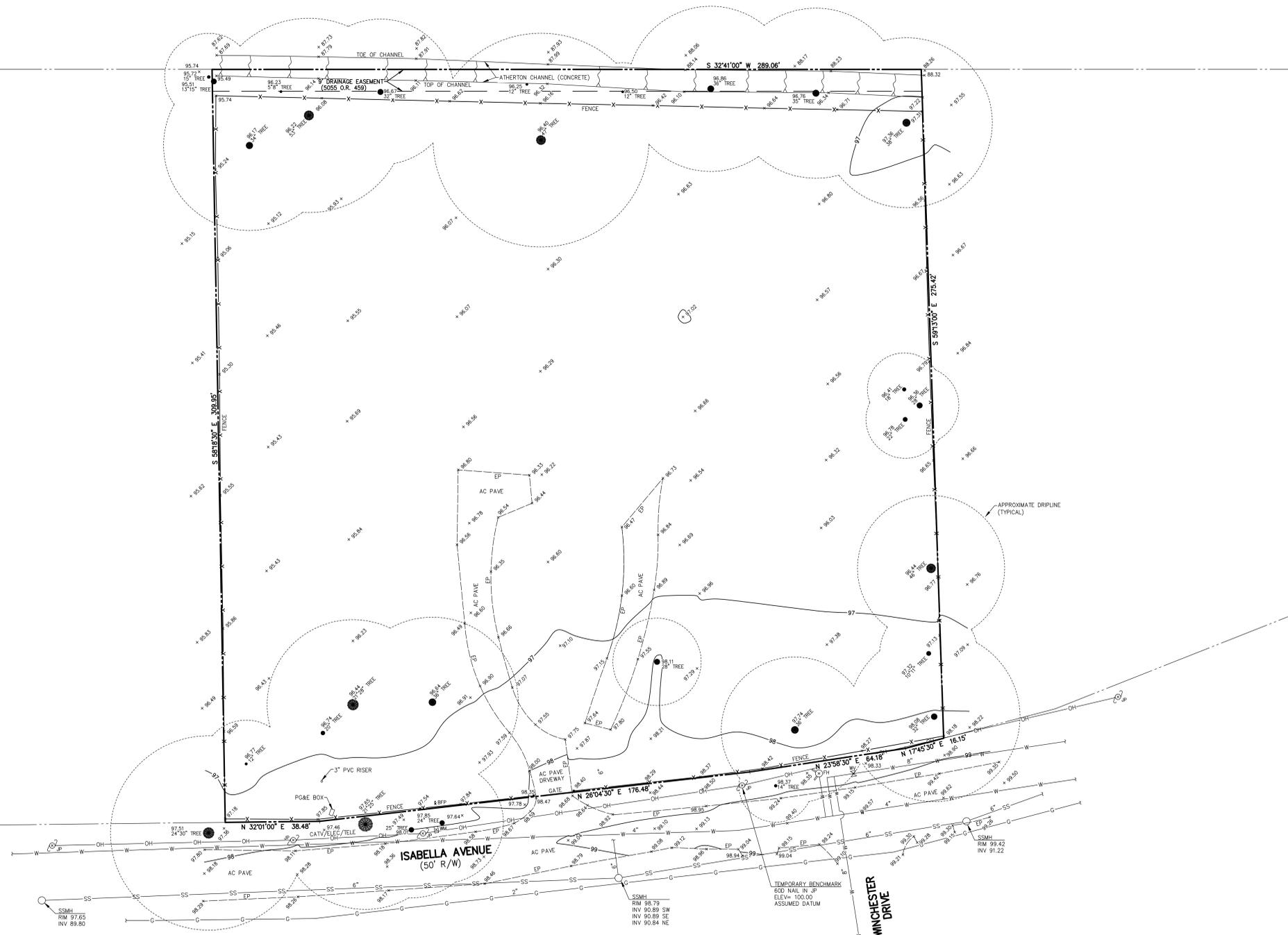
THIS IS TO CERTIFY THAT the Atherton City Council at a regular meeting thereof, held on Wednesday, June 15, 2022 did grant a Variance Certificate to property owners T & W Sunny LLC, pursuant to Atherton Municipal Code Chapters 17.06, 17.16, 17.32, and 17.46 to allow an as-built fence/wall to exceed six (6) feet in height and a retaining wall to be located less than five (5) feet from a property line at 25 Isabella Avenue in Atherton (Assessor’s Parcel Number 070-250-250). The Variance was approved subject to the following conditions:

1. The Variance is limited to the location of the as-constructed wall/fence as shown on the application materials prepared by Andrew G. Watters, Esq, as included as an attachment to the June 15, 2022 Planning Commission staff report and does not establish a setback for future improvements to the property.
2. Should the wall be damaged in any way in the future it shall be removed and if removed for any reason it shall not be replaced in its as-built location but shall comply with the requirements of the Atherton Municipal Code.
3. Applicant, its contractors, employees, assigns and agents shall comply with all applicable state laws and the Town’s Municipal Code.
4. If no action has been taken in one year, this Variance will become null and void.
5. Applicant shall defend, indemnify, and hold harmless the Town of Atherton and its agents, officers and employees from any claim, action or proceeding against the Town, or its agents, officers and employees to attach, set aside, void, or annul, an approval of the Planning Commission, or City Council concerning this project.

---

Lisa Costa Sanders  
Town Planner

Effective Date: \_\_\_\_\_  
Atherton, CA



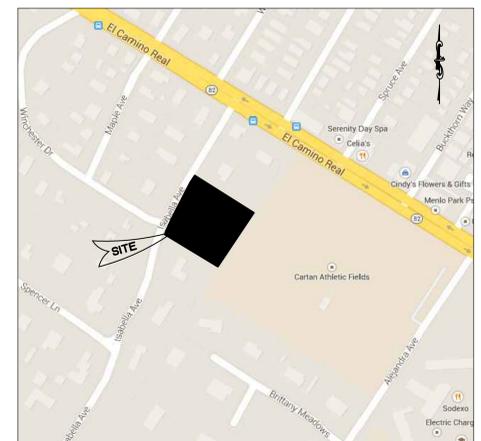
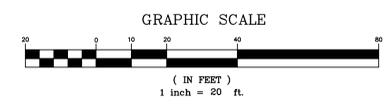
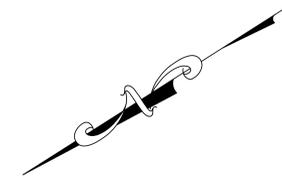
**LEGEND**

---	PROPERTY LINE
AC PAVE	ASPHALT CONCRETE PAVEMENT
BFP	BACK FLOW PREVENTER
CATV	CABLE TELEVISION
CONC	CONCRETE
ELEC	ELECTRIC
EP	EDGE OF PAVEMENT
FH	FIRE HYDRANT
INV	INVERT
JP	JOINT UTILITY POLE
SSMH	SANITARY SEWER MANHOLE
TELE	TELEPHONE
WM	WATER METER
WV	WATER VALVE
●	TREE W/ SIZE
-X-X-	FENCE
-G-	GAS LINE
-OH-	OVERHEAD LINE
-SS-	SANITARY SEWER LINE
-W-	WATER LINE

**LOT AREA:**  
 = 86,323 SQ. FT. ±  
 = 1.982 ACRES ±

**UTILITY NOTE:**

THE UTILITIES EXISTING ON THE SURFACE AND SHOWN ON THIS DRAWING HAVE BEEN LOCATED BY FIELD SURVEY. ALL UNDERGROUND UTILITIES SHOWN ON THIS DRAWING ARE FROM RECORDS OF THE VARIOUS UTILITY COMPANIES AND THE SURVEYOR/ENGINEER DOES NOT ASSUME RESPONSIBILITY FOR THEIR COMPLETENESS, INDICATED LOCATION, OR SIZE. RECORD UTILITY LOCATION SHOULD BE CONFIRMED BY EXPOSING THE UTILITY.



**VICINITY MAP**  
(NOT TO SCALE)

	<p><b>MACLEOD AND ASSOCIATES</b>                  CIVIL ENGINEERING • LAND SURVEYING                  965 CENTER STREET • SAN CARLOS • CA 94070 • (650) 593-8580</p>
<p>PREPARED FOR:                  WEINA YU</p>	<p>CALIFORNIA</p>
<p><b>TOPOGRAPHIC SURVEY PLAN</b>                  25 ISABELLA AVENUE                  A.P.N. 070-250-250                  PARCEL 2, 10 PM 33                  SAN MATEO COUNTY</p>	
<p>DRAWN BY: MDL                  DESIGNED BY: ---                  CHECKED BY: DGM</p>	<p>SCALE: 1"=20'                  DATE: 04-23-15                  DRAWING NO.                  4176-TOPO</p>
<p>SHEET                  1 OF 1</p>	

OPPOSITION TO APPEAL OF DENIAL OF VARIANCE BY 25 ISABELLA OWNERS  
June 3, 2022

We are the owners of 15 Isabella Avenue, the property adjacent to 25 Isabella Avenue. We oppose the “Appeal of Denial of Variance” dated May 19, 2022, which has been submitted to the Town Council, and we wish to respond to both the factual misrepresentations and *ad hominin* attacks against us made in Appeal.

THERE IS NO LEGAL BASIS FOR GRANTING A VARIANCE ON THE FENCE HEIGHT OR THE RETAINING WALL

**Appellant, in neither their original Variance Request nor their Appeal, state factual circumstances which would permit Atherton to grant a Variance under state law.** The Decision of the Planning Commission, as well as the Memorandum Re Variance Opposition dated March 14, 2022 that we submitted to the Planning Commission, summarize the four factual showings that must be made, and there can really be no argument that any of the findings, much less all four, have been met.

Apparently recognizing the weakness of their legal position, Appellants try to argue that we, their neighbors, “approved” of the wall and that such “approval” should obviate their obligation to comply with Town Building Code when constructing the wall. As discussed in more below, we never approved of the wall that was built (our “approval” was to a wall with no grade change) and, more fundamentally, our approval is immaterial to their failure to comply with code.

We believe that the only question that the Town Council should be asking is whether, prior to the construction of the wall, the requested Variance would have been granted. The answer to that question is certainly no, and the fact that Appellants chose to ignore and violate the Town Building Code should not change that answer.

RESPONSE TO FACTUAL MISREPRESENTATIONS IN THE APPEAL

**On page 1, the Appeal, states that the new wall between 25 and 15 Isabella “replaced a fence of identical height that was present for many years ...” That is not true.** We have owned 15 Isabella for almost 30 years, and the pre-existing fence between our property and 25 Isabella was a 6-foot cyclone fence having the same height as our existing back fence. As shown below, the new wall is approximately 2 feet higher than our existing back fence. This image is also of interest since it shows that the Appellants also built a back wall that appears to be at least 12 feet tall and is also in violation of the building code.



To our knowledge, no Variance request has ever been made for the 12-foot-high back wall, and we are curious to know if and when the Town is going to act on that further code violation.

**On page 1, the Appeal states that the new wall has “a concrete footing below grade.” That is not true.** The concrete footing is exposed at or above grade on the entire 200+ foot length of 15 Isabella side of the fence. The exposed footing can be seen in images of the wall reproduced below.



**On pages 1 and 2, the Appeal states that “The plans for the wall as approved by the neighbors at 15 Isabella are attached as attachment [sic] 6 and 7.” That is not true.** Attachments 6 and 7 to the Appeal are initial wall plans sent to our Property Manager on February 6 and February 19, 2019, respectively, which we never approved.

The “plan” we approved was sent in an email from Ms. Yu to our property manager on March 13, 2019, attached as Exhibit A. The email sent on March 13, 2019 included three different plans on two separate pdfs included in Exhibit A. Each of the three plans explicitly shows identical grade on both sides of the wall with wall heights ranging from 6.5 to 8 feet. As none of the three plans showed a grade change, our principal objection had been addressed, and our property manager “approved” without specifying any one plan of the three but assuming that the wall when built would not result in a grade change and of course comply with code.

The March 13 email also evidences that Appellant had been informed by the Town of the prohibition on retaining walls and grade changes at the property line. In her March 13 email submitting the revised plans, Ms. Yu specifically notes that her “project manager has spoken with the inspector about the fence.” This discussion presumably resulted from a meeting that we had with the Town Building Department on February 20, 2019, where we presented Appellant’s initial wall plans sent on February 6, 2019, and were told that any change of grade at the property line was against code and that a building inspector would inform 25 Isabella that the wall plan was non-compliant. As the grade change was removed from all three of the new plans sent to us on March 13, 2019, after Appellant’s property manager met with the inspector, it must be inferred that the Town informed Appellant that the grade change was not acceptable. Why else would the grade change have been removed from the revised plans sent to us after her project manager met with the inspector?

Thus, any argument that Appellant makes that they were unaware of the code requirements prohibiting the grade change and placement of a retaining wall before fence construction began is disingenuous.

**On the bottom of page 3, the Appeal states that “15 Isabella misrepresented the facts” at the Planning Commission meeting by saying that we “never knew the fence would be eight feet” and that the soil on the 25 Isabella side was “two feet higher” than on our side. That is not true.** Prior to construction, all knowledge we had regarding the wall design was provided by Ms. Yu in her March 13, 2019 email to our property manager, attached as Exhibit A. Each of the three plans that were sent to us explicitly showed identical grade on both sides of the wall and wall heights ranging from 6.5 to 8.

So, we stand by any statements that we might have made to the Planning Commission that, prior to actual construction of the wall, we did not know there would be a grade change or that the fence would be eight feet in height.

**The Appeal further argues that we “had to know the details because ...[the 15 Isabella owners] .. made the ... [25 Isabella owners] ... install a 280 foot-long drainage pipe after reviewing the plans.”** We have never “made” the Appellants do anything. As stated on page 3 of the Appeal, the Town required “designing a 280-foot drainage along the wall into the civil plan” in June 2020.

The only communication we can recall with Appellant concerning drainage is an exchange of texts sent on August 4, 2019, where Ms. Yu assured us that she “had installed drainage along the fence before the fence new construction started. At this moment the drainage system is covered by soil.” See, Attachment #9 to the Appeal Letter. So, by their own admission, Appellant appears to have completed the drainage before wall construction even began.

**But the Appeal is not satisfied with merely maligning our integrity, it goes on to assert that we are grifters attempting to make a few bucks over the misfortunes of our neighbor.** While it is true that, after allowing the 25 Isabella owners to stage the entire wall construction on our property for many months, we did expect that construction of the wall would be completed in a workman-like manner and that damage to our property would be repaired. Neither expectation was met. The wall was left with dirt piled high at the base, and the many pallets of concrete blocks, stacks of rebar, and other fence construction materials that were stored on our property during construction, as well as the concrete truck that poured from our side of the fence, damaged our black top and compacted the soil and along length of the fence. Mulching that we had spread the prior year was completely destroyed. To add injury to insult, Appellants further damaged our

property and the wall itself when they sent in a front-end loader in February 2020 (without our knowledge or permission) to remove the soil that had been left behind to cover the exposed wall footing.

Negotiations between our property manager and Appellants over repairs started at the end of September 2019 and continued through February 2020. There were some differences re the scope and cost of work, but the main sticking point was over who would choose the contractors to perform the asphalt repair. Based on the quality of work that we had seen on the wall, we very much wanted to use contractors selected by our property manager.

At all times we tried to be reasonable in our requests. See the email string among Ms. Yu, our property manager, and us, attached as Exhibit B, showing our offer to split the cost driveway repairs with Appellant which would have reduced the cost from our property manager's initial \$30,000 repair estimate to about \$20,000. We were more than cooperative during the entire time of the very flawed wall construction project and believed that Appellant should have acted with a similar spirit of cooperation in repairing all damage to our property.

We stopped discussions with the Appellants regarding repairs in February 2020, shortly after the dirt that was left behind was removed, revealing an exposed wall foundation and damage to the stucco. See the images of the exposed footing and stucco damage on page 2 above. Prior to the soil removal in February 2020, we were unaware that the wall footing was exposed along the entire length of the wall, substantially eliminating the previously existing planter strip along our garage. The soil removal, which Appellant performed with a front-end loader without our permission, resulted in significant damage to the stucco and further compaction and damage to the soil on our side of the fence. And while we cannot prove a specific causal link, we also believe that Appellant's use of the front-end loader and other heavy construction equipment around a cluster of oaks on our property resulted in the subsequent loss of a heritage oak as Appellant's contractors did not place protection around any of our trees and drove the heavy equipment over the trees' root systems.

When in February 2020 we saw the exposed footing and damaged stucco, which had been hidden by piled dirt since wall "completion," we became concerned about the wall structure and construction and reached out to the Atherton Building Department in February/March 2020. This was the beginning of Covid, and we were not able to meet with a code compliance inspector (Monica Diaz) until May 11, 2020. We met with Ms. Diaz and explained our concerns regarding the exposed footing.

Ms. Diaz, in return, told us that the wall height did not meet code and that the wall would have to be brought up to code by either lowering the wall height or raising the grade on our side of the wall. As we certainly had no intention of raising the grade on our side of the fence (it would in fact be impossible to do so without tearing down our garage), we concluded that wall was going to be removed or substantially modified, and we put all plans to repair our side of the wall on hold. While Ms. Diaz did mention the alternative of seeking a Variance, she told us that it was highly unlikely if not impossible for a variance to be granted in these circumstances.

**For all these reasons, we believe that the Appeal should be denied. As Appellant and/or their representatives had been informed least as early as March 2019 that a grade change at the property line was against code, and subsequently indicated their intention to comply with code by removing the grade change from their revised plans, they cannot argue that their willful violation of code was anyone's fault but their own.** Appellant's complete disregard of the Building Code is evidenced best by

their construction of the 12-foot rear wall shown in the image on page 1 of this Opposition. How could any building professional licensed to work in the Town of Atherton believe that building a 12-foot-high concrete block wall at a property boundary was code compliant, with or without a grade change?

James Heslin  
Rose Hau  
Owners 15 Isabella Avenue

EXHIBIT A (Page 1/3)



15-073 -  
ENG-18-2-10 - FENCE



StuccoFence-2019-3-  
12.pdf

**From:** Nana Y <[REDACTED]>  
**Sent:** Wednesday, March 13, 2019 11:22 AM  
**To:** Anne Wilbur <[a@wilburproperties.com](mailto:a@wilburproperties.com)>  
**Subject:** 15 Isabella / 25 Isabella fence detail

Hi Anne,

Our project manager has spoken with the inspector about the fence between 15 Isabella & 25 Isabella. The Inspector said since this fence is between my neighbor and me, we will not need a permit from the town. We can work on it after my neighbors have approved the fence design.

My architect has revised the fence design, please see attachments. Can you forward them to the 15 Isabella owners for their approval? Since my project has to be done by the end of April, I hope we can start the fence construction ASAP.

Also, I have a property located at 939 University Ave, Palo Alto. I may like to rent it out. Have you got a bit time to meet and take a look of the property?

Thanks,  
Weina  
[REDACTED]

----- Forwarded Message -----

**From:** Hong Wei <[REDACTED]>  
**To:** Nana Y <[REDACTED]>; 25 Isabella Ave <[REDACTED]>  
**Sent:** Tuesday, March 12, 2019, 3:15:01 PM PDT  
**Subject:** fence detail

Hi Weina,

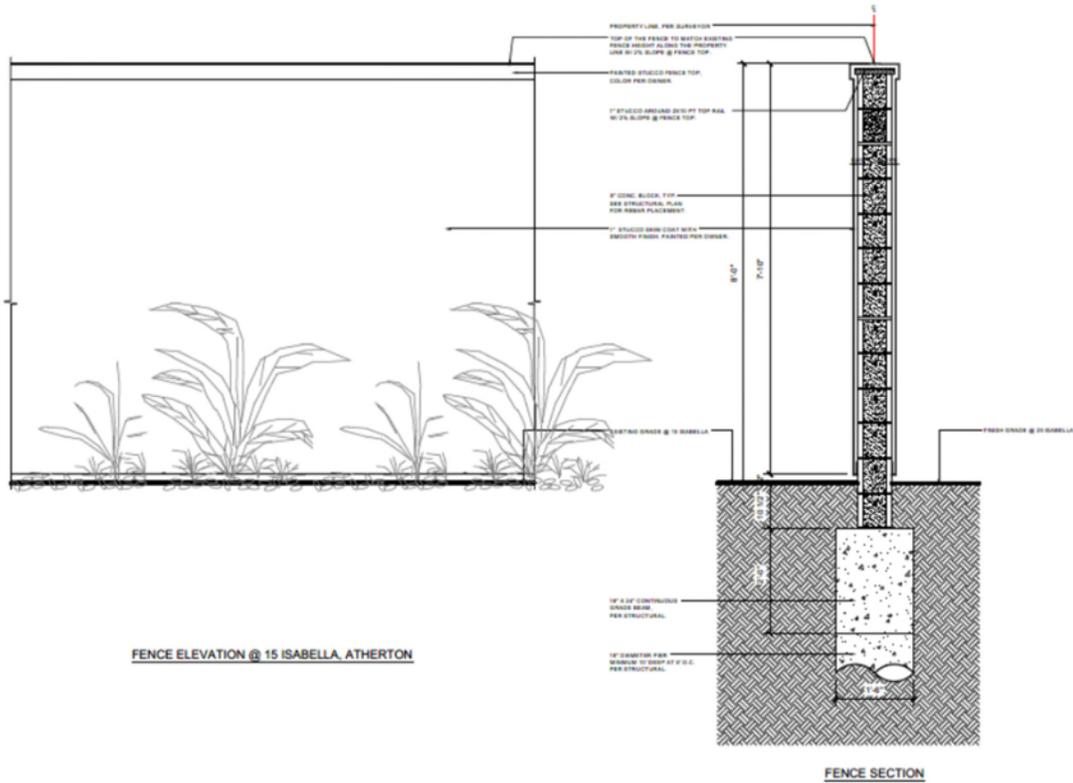
Please refer to the attached. Thank you!

best regards,

Hon



EXHIBIT A (Page 3/3)  
 StuccoFence 2019-3-12.pdf



FENCE ELEVATION @ 15 ISABELLA, AHERTON

FENCE SECTION

① GOOD NEIGHBOR FENCE - STUCCO FENCE  
 SCALE: 1/2"=1'-0"

EXHIBIT B

Page 1/5

On Dec 18, 2019, at 11:22, Rose Hau <[rhauaia@aol.com](mailto:rhauaia@aol.com)> wrote:

Hi Weina,

I hope you are enjoying the holiday season.

We've had time to look at the situation and I think you will agree that our property is not in the same condition as it was before you started the project. Your fence contractor used our property as the primary construction staging area with little regard to protecting the property. Heavy equipment was used throughout the project to transport the materials, causing damage to the driveway. Large pallets of concrete blocks were stored on mulched soil and rebar was left on the lawn and elsewhere. When the project was complete, no effort was made to restore the site to its prior condition. The excavated soil was piled up and along the fence and at the back of the property. Pavers at the back of the property a gravel parking area were not restored. Splashed mortar was left on the garage walls. Trash was left on the site.

For these reasons, we think that Anne's estimate was fair. In particular, the cost of soil removal, planting bed repair and back fence repair (\$1,580 + \$11,440) is justified. We are, however, willing to split the cost (50/50) of the asphalt repair work (\$17,260.00) - even though the heavy equipment caused damage as Anne described. Thus, the total amount would be reduced to \$21,650.

Also, consider that we are not asking for restoration and clean up of the other items listed above and in Anne's email. We had just spent \$2500 on new mulch prior to start of the fence. Much of that along the driveway was destroyed when the heavy concrete blocks were placed on it.

Since you and your construction manager think that these amounts are high, perhaps you can provide an estimate from a qualified contractor who can do this work at a more reasonable cost? This might be a good solution that we would consider.

We are not trying to be difficult and truly believe that this compromise is fair for everyone. We had no idea at the outset that this work would cause such a disruption on our property, but always believed as we saw the damage that you would make it right in the end.

Best,

Rose

On Dec 18, 2019, at 11:22, Rose Hau <[REDACTED]> wrote:

Hi Weina

EXHIBIT B

Page 2/5

I hope you are enjoying the holiday season.

We've had time to look at the situation and I think you will agree that our property is not in the same condition as it was before you started the project. Your fence contractor used our property as the primary construction staging area with little regard to protecting the property. Heavy equipment was used throughout the project to transport the materials, causing damage to the driveway. Large pallets of concrete blocks were stored on mulched soil and rebar was left on the lawn and elsewhere. When the project was complete, no effort was made to restore the site to its prior condition. The excavated soil was piled up and along the fence and at the back of the property. Pavers at the back of the property a gravel parking area were not restored. Splashed mortar was left on the garage walls. Trash was left on the site.

For these reasons, we think that Anne's estimate was fair. In particular, the cost of soil removal, planting bed repair and back fence repair (\$1,580 + \$11,440) is justified. We are, however, willing to split the cost (50/50) of the asphalt repair work (\$17,260.00) - even though the heavy equipment caused damage as Anne described. Thus, the total amount would be reduced to \$21,650.

Also, consider that we are not asking for restoration and clean up of the other items listed above and in Anne's email. We had just spent \$2500 on new mulch prior to start of the fence. Much of that along the driveway was destroyed when the heavy concrete blocks were placed on it.

Since you and your construction manager think that these amounts are high, perhaps you can provide an estimate from a qualified contractor who can do this work at a more reasonable cost? This might be a good solution that we would consider.

We are not trying to be difficult and truly believe that this compromise is fair for everyone. We had no idea at the outset that this work would cause such a disruption on our property, but always believed as we saw the damage that you would make it right in the end.

Best,

Rose

-----Original Message-----

From: Nana Y <[REDACTED]>  
To: rhauaia <[REDACTED]>  
Sent: Tue, Dec 10, 2019 12:59 pm  
Subject: Re: 15 Isabella, Atherton

Hi Rose,

How are you doing?

Recently we received the following email from your management company for the repair proposal.

I have forwarded Anne's email to the fence contractor, he strongly disagreed, and he requested the final payment for fence construction.

EXHIBIT B  
Page 3/5

Now the situation is pretty tough. The unpaid balance for the fence contractor's job is only \$11,000. I am sure he would not pay the \$30,280 repair fee. If we stick to the \$30,280 compensation, we will have to go to court to sue him. At that time the accurate repair fee will be estimated by a third party.

I hope we could to find a better solution. The repair proposal amount was pretty high, actually it was beyond me and my construction manager's expectation too.

Now the best solution we can think of is, to give you the final payment amount of the fence construction (\$11,000) as a compensation. The fence contractor would not agree, we will just inform him through email, and will cc the email to you.

Please think about it and let me know. We are truly sorry for all the inconveniences.

Best,  
Weina

> On Nov 23, 2019, at 16:02, Anne Wilbur <[a@wilburproperties.com](mailto:a@wilburproperties.com)> wrote:

>

> Hi Weina,

>

> I am sorry it has taken so long to obtain estimates for all the repairs that are required as a result of the damages caused by your contractor at 15 Isabella. The items and amounts are as follows:

>

>

> 1. Repair 14 feet of the back fence. \$1,580.00

> 2. We asked our landscaper to handle the

EXHIBIT B  
Page 2/3

> following items:

>

> \* Remove approximately 30 cubic yards

>

> of soil that has been piled up along the

>

> new fence. Re-grade planters along the

>

> driveway and prepare for mulch installa-

>

> tion. Install two zones of drip irrigation.

>

> Install approximately 40 cubic yards of

>

> mulch (along the fence and areas where

EXHIBIT B  
Page 4/5

- >
- > the tractor tore into the planters along
- >
- > the driveway and at the back of the
- >
- > property.
- >
- > Total \$11,440.00
- >
- > 1. Repairs to paving:
- > \* Remove and replace about 360 s.f.
- >
- > Of concrete pavers
- >
- > \* Clean asphalt driveway and apply crack
- >
- > Filler over cracks larger than 1/2" wide;
- >
- > Apply two coats of sealcoat with 2%
- >
- > Latex and sand over 4,750 s.f.
- >
- > Total \$17,260.00
- >
- > **Grand Total \$30,280.00**
- >
- > These estimates do not include: replacing the plants that were planted along the driveway where the new fence was installed; power washing the garage walls that have concrete splashes; repairing the left front lawn that has truck or car tire tracks; or removing the excess mastic below the tiles that cap the fence. We will handle these last items for the owners.
- >
- > I am sorry that these expenses are so high. The major expense
- > is for repairing the asphalt that was damaged by your contractor's heavy construction equipment and vehicles.
- >
- > Please let me know if you have any questions.
- >
- > Yours truly,
- >
- > Anne
- >
- > Anne K. Wilbur, CPM
- >
- > Broker and Owner
- > Wilbur Properties, LP
- >
- > 790 High Street
- >

EXHIBIT B  
Page 5/5

> Palo Alto, CA 94301  
> Direct - 650.847.4347  
>  
> Cell - 415.559.5557  
>  
> Efax - 866.304.9603  
>  
> Email - [a@wilburproperties.com](mailto:a@wilburproperties.com)<mailto:[a@wilburproperties.com](mailto:a@wilburproperties.com)>  
>  
> BRE License: 00823559  
>  
> 790 High Street  
> Palo Alto, 94301-0128  
> [www.wilburproperties.com](http://www.wilburproperties.com)<<http://www.wilburproperties.com>>  
>  
>  
> <winmail.dat>