



# NEWPORT BEACH

## BUILDING AND FIRE BOARD OF APPEALS

### STAFF REPORT

September 10, 2024  
Agenda Item No. 1

**TO:** CHAIR AND MEMBERS OF BOARD

**FROM:** Tonee Thai, Deputy Community Development Director / Chief Building Official

**PREPARED BY:** Tonee Thai, Deputy Community Development Director / Chief Building Official, 949-718-1867, [tthai@newportbeachca.gov](mailto:tthai@newportbeachca.gov)

**TITLE:** 1113 Kings Road - Appeal of The Building Official's Determination to Obtain a Building Permit to Replace Wrought Iron Guardrails with Wooden Fence on Top of Existing Retaining Wall

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#### **ABSTRACT:**

For the Building and Fire Board of Appeal's ("Board") consideration is an appeal of the City's Chief Building Official's determination that application for, and issuance of, a building permit is required before the Appellant, the owner of 1113 Kings Road ("Property"), may erect a wooden fence on top of a retaining wall on the west side of the Property.

#### **ISSUE FOR CONSIDERATION:**

The scope of the appeal is for the Board to decide whether the Appellant is required to apply for and obtain a building permit to erect a wooden fence on top of a retaining wall on the west side of his Property. Appellant previously removed existing wrought iron railing on top of the retaining wall, and without applying for a building permit, erected new wooden fencing on top of the retaining wall.

Although Appellant's appeal also includes a challenge to Section 20.30.040 of Title 20 (Planning and Zoning) of the Newport Beach Municipal Code (NBMC) regarding zoning standards for fences and walls, the application of Title 20 is beyond the scope of this appeal and beyond the jurisdiction of the Board. The question before the Board is whether or not Appellant is required to apply for a building permit to construct the new wooden fence. The issue is not whether or not the wooden fence is permissible. If this Board decides that application for a building permit is required, then Appellant would then be required to file building plans in connection with the application for a building permit, at which time the Planning Division of the Community Development Department would determine whether the wooden fencing is permissible, and whether it complies with the zoning and development standards of Title 20. In the event that the Planning Division determines that the wooden fence does not comply with the zoning and development standards of Title 20, then Appellant may pursue other options, including but not limited to, filing an application for a variance through the Planning Division. A variance application is a discretionary action that requires review and approval by the City's Planning Commission.

**RECOMMENDATIONS:**

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

**DISCUSSION:**

A permit application was submitted on October 18, 2019, under Plan Check Number 2295-2019 for a new single-family residence, garage, various accessory structures and site retaining walls. The approved project included installation of wrought iron guard railing on top of an existing retaining wall on the Property (See Attachment A, Excerpt of Plan Check Number 2295-2019 approved plans showing location of fence in question). The construction of the project was completed, including installation of the wrought iron guardrails, and related permits received final inspection on October 16, 2023.

On or about November 22, 2023, after the construction was completed and permits final, the City received a complaint regarding unpermitted construction at the subject property. Code Enforcement staff investigated and found that the previously installed and approved wrought iron guardrail on top of an existing retaining wall located on the west side of property had been replaced with a wooden fence. No application for a building permit was filled with the City. The City issued a Notice of Violation (NOV) for the unpermitted work on December 7, 2023, and followed up on December 18, 2023, with a second NOV (See Attachment B).

Subsequent communications between the City and Appellant to gain compliance led to the Building Official issuing a decision letter dated May 1, 2024, that a building permit is required for the replacement of the existing wrought iron guardrail with a wooden fence (See Attachment C).

The Appellant rebutted the Chief Building Official's determination, alleging that there is no violation of the NBMC or the California Building Code. Appellant further contended that the previously approved building plans for the wrought iron guardrail authorized replacement with the wooden fencing. Appellant's position is included in the appeal application (submitted to the Board herewith).

**Chief Building Official's Determination:**

Due to the height of the combined wooden fence and retaining wall, a building permit is required per California Building Code Section 105.1 prior to construction of a wooden fence on top of existing retaining wall (See Attachment D). CBC Section 105.1 states (emphasis added):

*Any owner or owner's authorized agent who intends to construct, enlarge, alter, repair, move, demolish or change the occupancy of a building or structure, or to erect, install, enlarge, alter, repair, remove, convert or replace any electrical, gas,*

*mechanical or plumbing system, the installation of which is regulated by this code, or to cause any such work to be performed, shall **first make application to the building official and obtain the required permit.***

Additionally, the Chief Building Official, in his determination letter, explained that the wooden fence is not authorized by the prior approved plans, PC 2295-2019, which only authorized wrought iron railing, because California case law holds that the rights granted by a permit are limited to those specifically stated in the permit.<sup>1</sup> Furthermore, the determination letter explained that a guardrail is different than a fence. In particular, a guardrail is “constructed of open grillwork, wrought iron, latticework, pickets, or similar materials so that at least forty (40) percent of the fence is open.”<sup>2</sup> By contrast, a “fence” is a “solid structure that is a barrier and used as a boundary or means of protection, confinement, or concealment.”<sup>3</sup> Therefore, the wooden fence is not authorized by PC 2295-2019 because it is not a guardrail.

### **Board Review:**

The Building Official's determination regarding unpermitted construction under the NBMC and CBC Section 105.1 is appealable to this Board. In the event that this Board upholds the Building Official's determination that the Appellant is required to file for a building permit, then the Appellant will be required to submit plans for review by the City's Planning Division as part of the building permit application. If the City's Planning Division determines that the wooden fence does not comply with the City's zoning and development standards of Title 20, then the Appellant may pursue other options, including but not limited to, filing an application for a variance to be reviewed by the City's Planning Commission at that time.

### **NOTICING:**

The agenda item has been noticed according to the Brown Act (72 hours in advance of the meeting at which the City Council considers the item).

### **ATTACHMENTS:**

- Attachment A – Plan Check 2295-2019 Approved Drawings
- Attachment B – Notices of Violation
- Attachment C – Building Official Determination Letter
- Attachment D – CBC Section 105.1 Excerpt
- Attachment E – Draft Decision
- Attachment F – Appellant's Submitted Material

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<sup>1</sup> Russ Bldg. Partnership v City & County of San Francisco, 44 Cal. 3d 839, 853-854 (1988) (holding that permittees had no greater rights than those granted them under the permit and stating, “[t]o the extent plaintiffs relied on their own self-serving interpretation ... such reliance must be considered unreasonable”); accord, Attard v. Board of Supervisors of Contra Costa County, 14 Cal. App. 5th 1066 (2017).

<sup>2</sup> NBMC 20.30.040(A)(2), (C)(1), and (C)(3)(b).

<sup>3</sup> NBMC 20.70.20(F).

# **Attachment A**

Plan Check 2295-2019 Approved Drawings

PROJECT INFORMATION

CLIENT: [Name]
ADDRESS: [Address]
CITY: [City]
STATE: [State]
ZIP: [ZIP]

DATE: 03-15-23
SCALE: AS SHOWN

PROJECT DESCRIPTION: NEW 3 STORY SINGLE FAMILY RESIDENCE WITH ATTACHED GARAGE AND DETACHED CABANA

OWNER: [Name]
ARCHITECT: [Name]

ENGINEER: [Name]

DATE: 03-15-23

SCALE: AS SHOWN

PROJECT INFORMATION

CLIENT: [Name]
ADDRESS: [Address]
CITY: [City]
STATE: [State]
ZIP: [ZIP]

DATE: 03-15-23
SCALE: AS SHOWN

PROJECT DESCRIPTION: NEW 3 STORY SINGLE FAMILY RESIDENCE WITH ATTACHED GARAGE AND DETACHED CABANA

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DATE: 03-15-23

SCALE: AS SHOWN

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DATE: 03-15-23

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ARCHITECT: [Name]

ENGINEER: [Name]

DATE: 03-15-23

SCALE: AS SHOWN

PROJECT INFORMATION

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ADDRESS: [Address]
CITY: [City]
STATE: [State]
ZIP: [ZIP]

DATE: 03-15-23
SCALE: AS SHOWN

PROJECT DESCRIPTION: NEW 3 STORY SINGLE FAMILY RESIDENCE WITH ATTACHED GARAGE AND DETACHED CABANA

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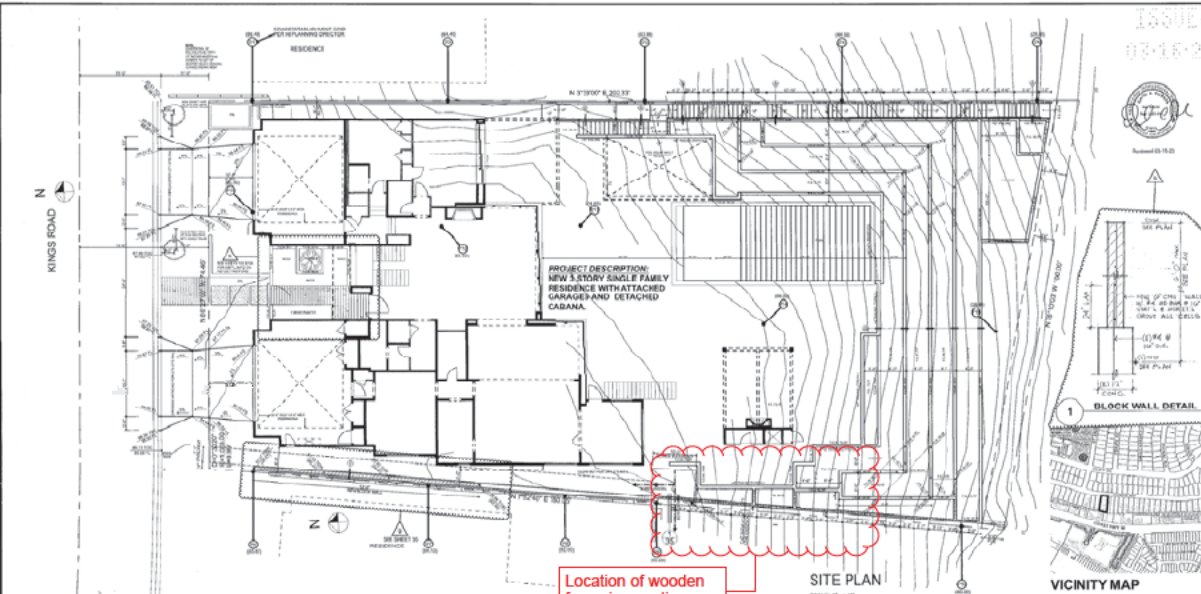
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Location of wooden fence in question.

SITE PLAN

VICINITY MAP



NOTE
1. ALL WORK SHALL COMPLY WITH THE FOLLOWING CODES INCLUDING LOCAL AMENDMENTS:

- List of codes and standards including California Building Code, California Fire Code, etc.

DEFERRED SUBMITTALS
1. ALL DEFERRED SUBMITTALS SHALL BE REVIEWED AND APPROVED BY THE ENGINEER PRIOR TO CONSTRUCTION.

- List of deferred submittals including foundation, framing, etc.

REQUIRED SPECIAL INSPECTIONS
1. SPECIAL INSPECTIONS SHALL BE PROVIDED AS REQUIRED BY THE BUILDING CODE.

- List of special inspections including foundation, framing, etc.

FIRE SPRINKLER NOTES
1. ALL FIRE SPRINKLER SHALL BE PROVIDED WITH A FLOW RATE OF 15 GPM FOR EACH SPACER.

- List of fire sprinkler notes including flow rate, spacing, etc.

PLANS PREPARED BY
[Name]

Coast Geotechnical - Soils Engineer
[Name]

Forrest Engineering & Surveying - Civil Engineer
[Name]

MONTEREY ENERGY GROUP, INC.
[Name]

Bull Surveying, Inc. - Topographic Survey
[Name]

DAVID A. ROYCE, PE - RETAINING WALL DESIGN
[Name]

DAVID A. ROYCE, PE - RETAINING WALL DESIGN
[Name]

DAVID A. ROYCE, PE - RETAINING WALL DESIGN
[Name]

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[Name]

DAVID A. ROYCE, PE - RETAINING WALL DESIGN
[Name]

DAVID A. ROYCE, PE - RETAINING WALL DESIGN
[Name]

SEE PAGE 1A FOR VA219-002 CONDITIONS OF APPROVAL
NEWPORT BEACH ZONING CODE GRADE ESTABLISHMENT

EAST PROPERTY LINE
60'-00"=60'-00" DIVIDE BY 100.00 = 30.5% SLOPE

WEST PROPERTY LINE
55'-00"=55'-00" DIVIDE BY 100.00 = 28.5% SLOPE

SITE PLAN NOTES
1. ALL FOUNDATION SHALL BE CONCRETE ON COMPACTED FILL.

- List of site plan notes including foundation, grading, etc.

2. ALL FOUNDATION SHALL BE CONCRETE ON COMPACTED FILL.

3. ALL FOUNDATION SHALL BE CONCRETE ON COMPACTED FILL.

4. ALL FOUNDATION SHALL BE CONCRETE ON COMPACTED FILL.

5. ALL FOUNDATION SHALL BE CONCRETE ON COMPACTED FILL.

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7. ALL FOUNDATION SHALL BE CONCRETE ON COMPACTED FILL.

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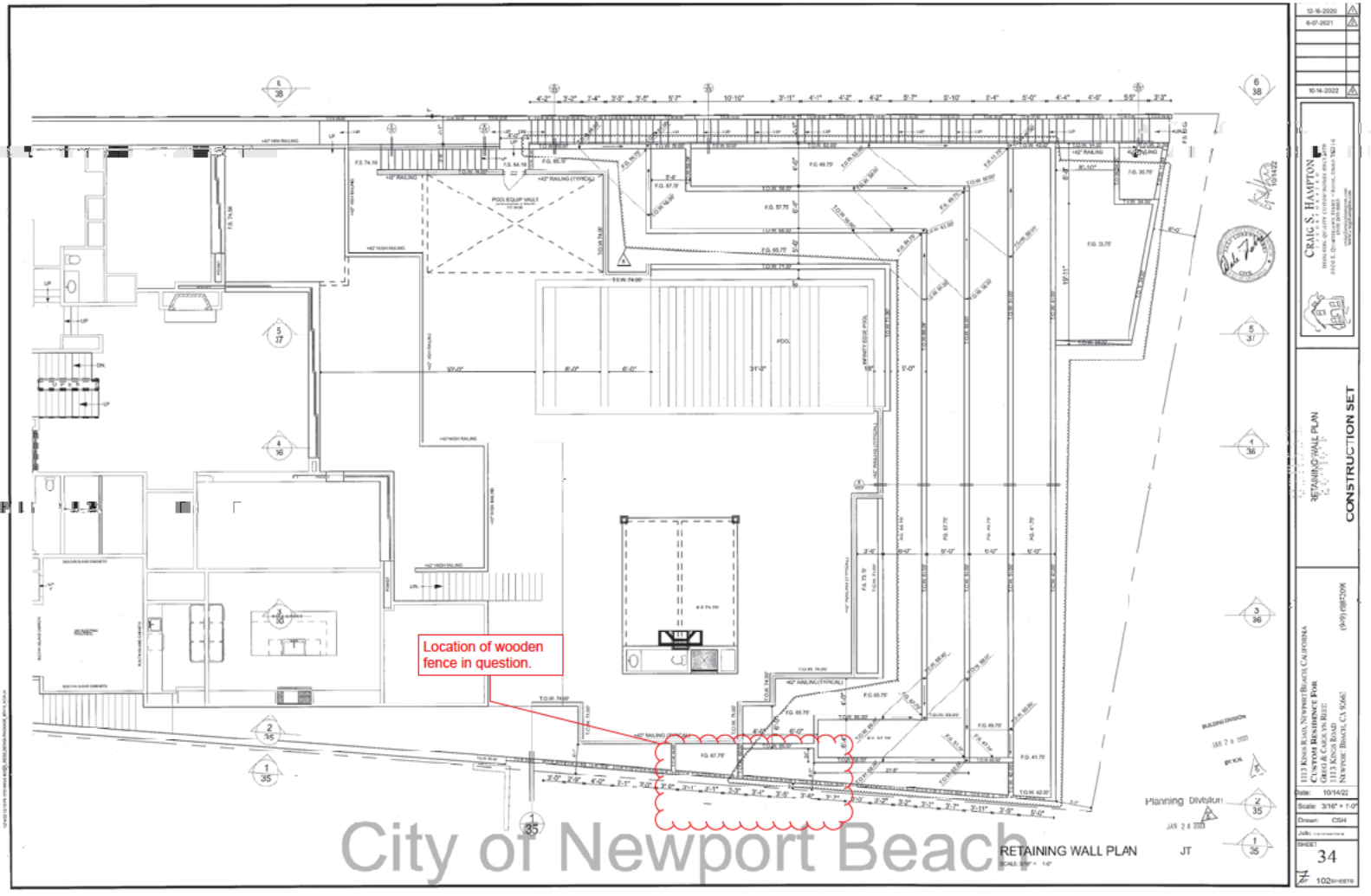
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City of Newport Beach

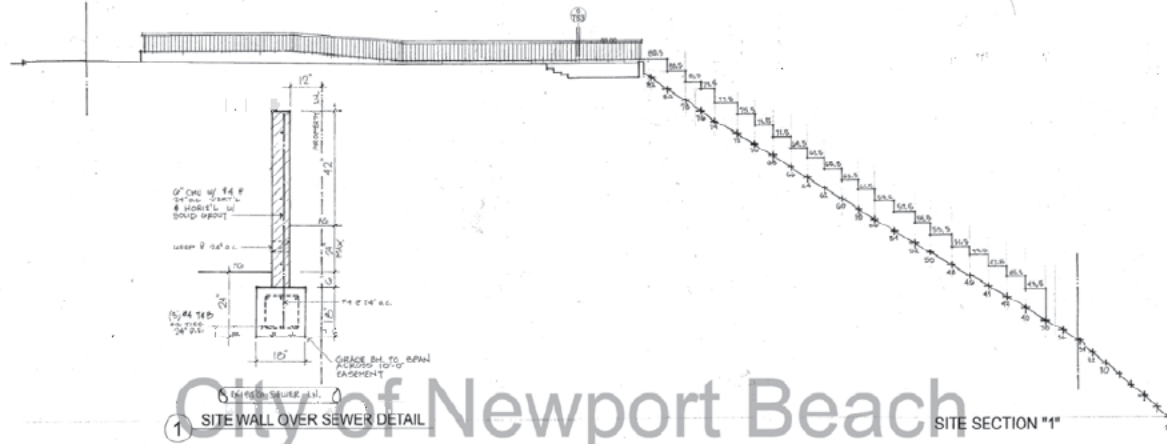
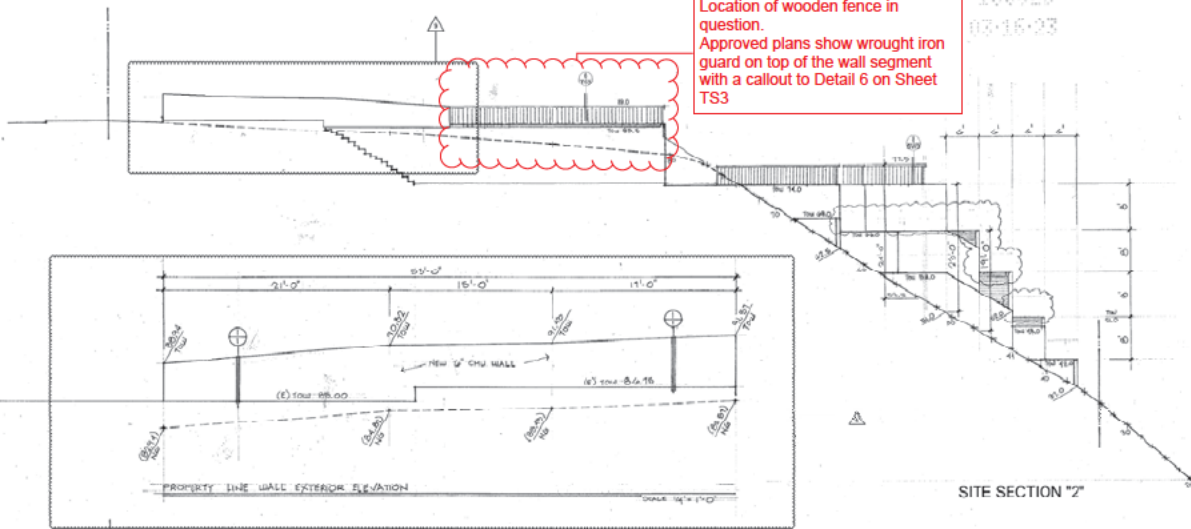
RETAINING WALL PLAN  
 SCALE: 1/4" = 1'-0"

Planning Division  
 JAN 24 2023  
 JT

12-9-2020	6-07-2021	10-14-2022
CRAIG S. HAYTON ARCHITECT 1113 KINGS ROAD, NEWPORT BEACH, CALIFORNIA 92660-3222 (949) 862-2000 www.craigshayton.com		
RETAINING WALL PLAN CONSTRUCTION SET		
1113 KINGS ROAD, NEWPORT BEACH, CALIFORNIA CUSTOM RESIDENCE FOUR 1113 KINGS ROAD NEWPORT BEACH, CA 92660 0971082006		
Date: 10/14/22 Scale: 3/4" = 1'-0" Drawn: CSH Job:	SHEET 34 102 sheets	

ISSUED  
03-16-23

Location of wooden fence in question.  
Approved plans show wrought iron guard on top of the wall segment with a callout to Detail 6 on Sheet TS3



City of Newport Beach

10-21-2022	
10-24-2022	
CRAIG S. HAVATON REGISTERED CIVIL ENGINEER - STATE OF CALIFORNIA CRAIGSHAVATON.COM	
	
SITE SECTIONS	
CONSTRUCTION SET	
Planning Division	330 15 000
VC	
WALLENMANN	
MAT 11 2023	
WPKA	
Date: 2/24/23	
Drawn: VSP - VSP	
Drawn: GSH	
JOB: UNKNOWN	
SHEET	35
OF 26 SHEETS	



**BASE PLAN**

100111M RESIDENCE FOR GREG & CATHY  
 1115 KINGS ROAD, NEWPORT BEACH,  
 CA 92661 JOHN PETERSEN, 2019 BY  
 GRASHAMPTON INCORPORATED

DAVID A. PURKIS, PE  
 CONSULTING CIVIL ENGINEER  
 GEOTECHNICAL - STRUCTURAL  
 32221 GARDENS DRIVE  
 SAN JUAN CAPISTRANO, CA 92675  
 949.661.6381 phone  
 purkeng@earthlink.net



**SITE RETAINING  
 WALL WITH  
 INTEGRATED  
 TEMPORARY  
 SHORING  
 STRUCTURAL PLAN**

RESIDENCE  
 1115 KINGS ROAD  
 NEWPORT BEACH, CA

**SHORING WALL PLAN**

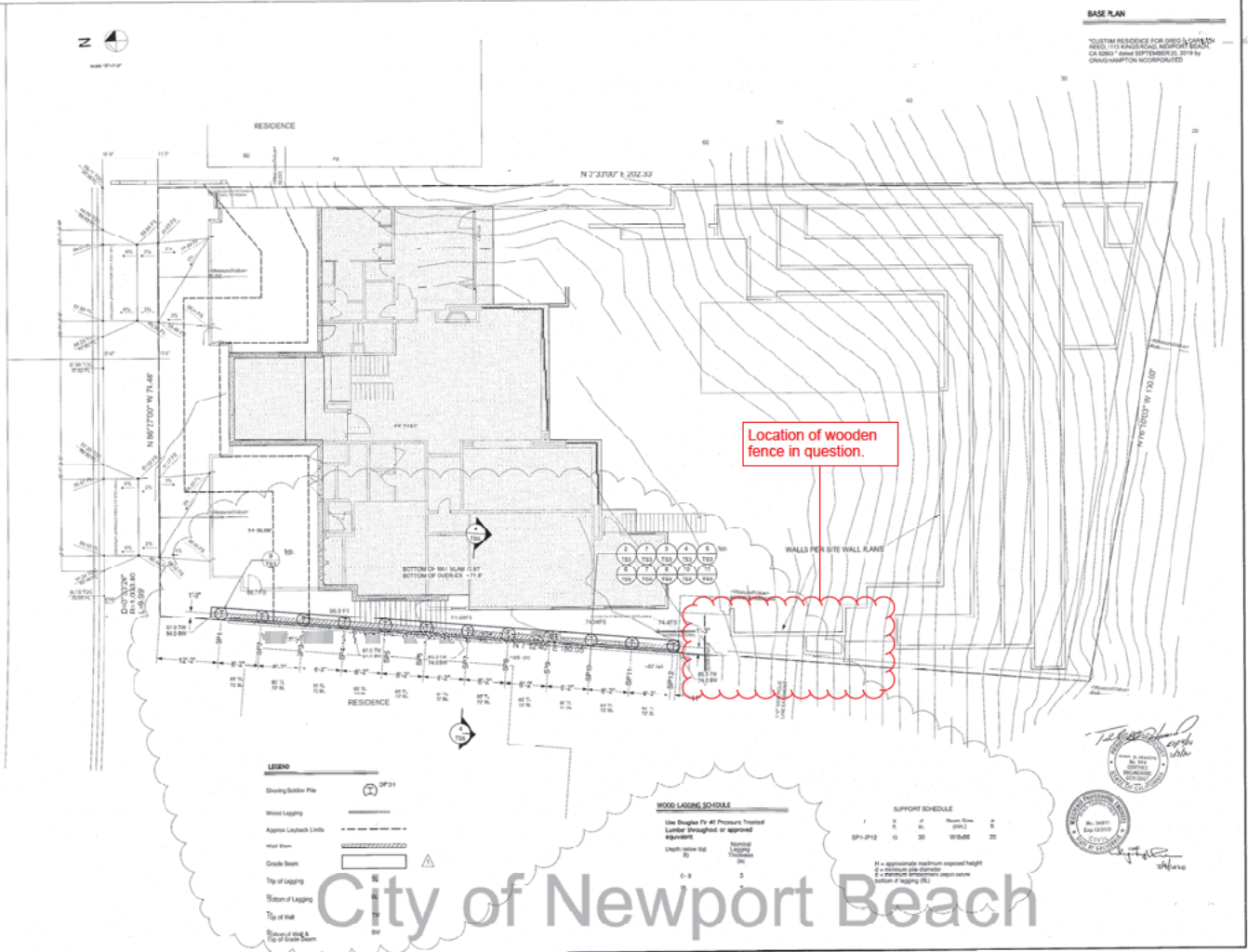
DATE: October 3, 2019  
 REVISIONS:  
 1. December 31, 2019

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APPROVED:  
 JOB NO.: 19-403  
 SCALE:

DESIGN:  
 10.27.2009  
 10.27.2009  
 11.11.2009

CONSTRUCTION SET



**LEGEND**

- Shoring Suction Pile
- Wood Lagging
- Apron Lateral Limits
- Weld Beam
- Grade Beam
- Top of Lagging
- Bottom of Lagging
- Top of Wall
- Bottom of Wall & Top of Grade Beam

**WOOD LAGGING SCHEDULE**

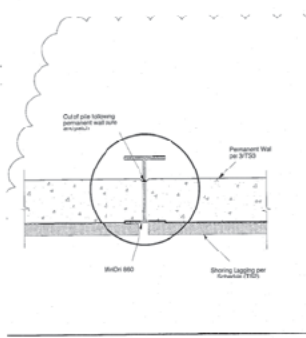
Use Douglas Fir #1 Pressure Treated  
 Lumber throughout or approved  
 equivalent.  
 Depth below top of  
 lagging  
 (ft)

**SUPPORT SCHEDULE**

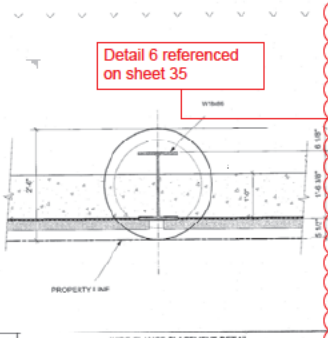
Beam Size	Span (ft)
SP-1-P12	12 30 W/20S 20

If approximate maximum exposed height  
 of a shoring pile/beam  
 is a shoring pile/beam  
 bottom of lagging (ft)



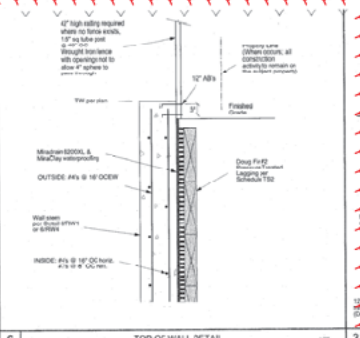


PILE CUTTING DETAIL NTS 9

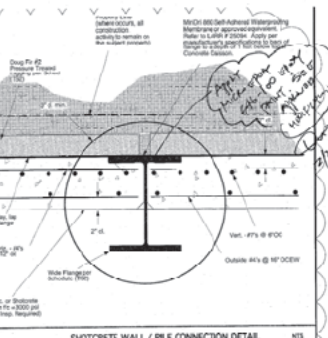


Detail 6 referenced on sheet 35

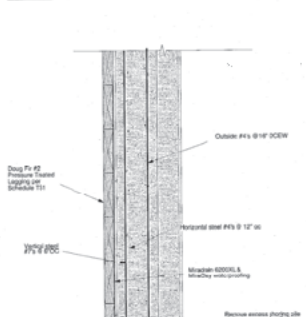
WIDE FLANGE PLACEMENT DETAIL NTS 6



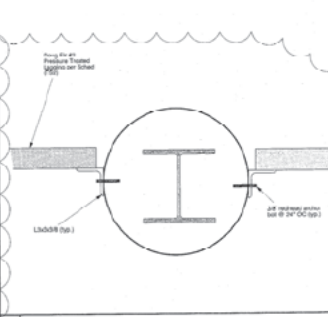
TOP OF WALL DETAIL NTS 3



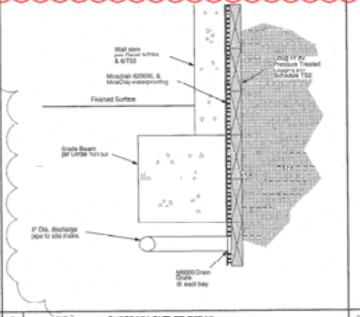
SHOTCRETE WALL / PILE CONNECTION DETAIL NTS 3



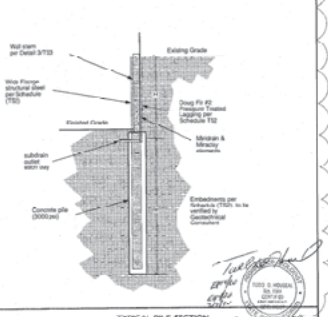
GRADE BEAM TO WALL STEM DETAIL NTS 7



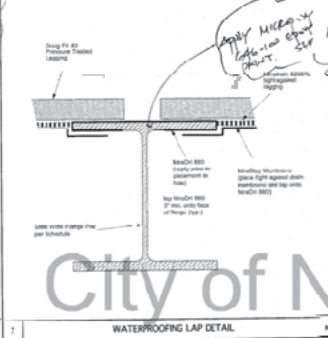
LAGGING CONNECTION DETAIL NTS 5



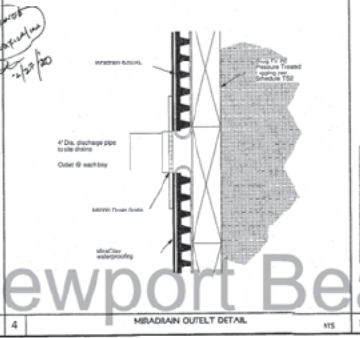
SUBDRAIN OUTLET DETAIL NTS 2



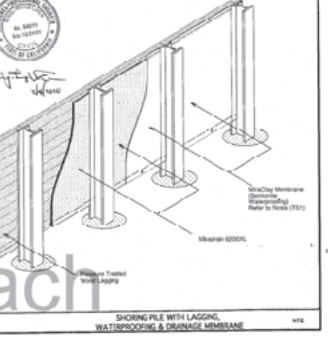
TYPICAL PILE SECTION NTS 3



WATERPROOFING LAP DETAIL NTS 4



MISDRAIN OUTLET DETAIL NTS 1



SHORING PILE WITH LAGGING, WATERPROOFING & DRAINAGE MEMBRANE NTS 1

DAVID A. PURKIS, PE  
 CONSULTING CIVIL, ARCHITECTURAL  
 GEOTECHNICAL & STRUCTURAL  
 12521 Castaneda Drive  
 San Juan Capistrano, CA 92675  
 949.681.4381 phone  
 david@dapurkis.com

SITE RETAINING WALL WITH INTEGRATED TEMPORARY SHORING  
 STRUCTURAL PLAN

REISED REFERENCE:  
 1115 KINGS ROAD  
 NEWPORT BEACH, CA

CONSTRUCTION SET

DATE: October 3, 2019  
 REVISION: December 31, 2019

APPROVED: [Signature]  
 JOB NO.: 19-4013  
 SCALE:

SHEET NO.: 10  
 TOTAL SHEETS: 10

City of Newport Beach

# **Attachment B**

Notices of Violation



# NOTICE OF VIOLATION

CITY OF NEWPORT BEACH  
COMMUNITY DEVELOPMENT DEPARTMENT  
Code & Water Quality Enforcement  
100 Civic Center Drive, Newport Beach, CA 92660  
949-644-3215

Name of Owner or Business: **GREGORY IRA CMGI REED**  
  
**PO BOX 1245**  
**NEWPORT BEACH, CA 92659**

Case #: **123-3980**  
Date Established: **11/22/2023**

Warning Only: **X**  
Previously Advised:  
Final Warning:

An inspection of the premises located at **1113 KINGS RD** on **Wednesday, November 22, 2023**, revealed a violation(s) of the Newport Beach Municipal Code.

**NEWPORT BEACH MUNICIPAL CODE SECTION / DESCRIPTIONS OF VIOLATION:**  
**1) NBAC 105.1 BUILDING PERMIT REQUIRED**

**Correction(s) Required:**

1) THE WOOD FENCE (WEST SIDE) IS NOT CONSISTENT WITH PC2295-2019. PLEASE REMOVE AND REPLACE WITH MATERIALS APPROVED AND ENSURE THE FENCE DOES NOT EXCEED THE ALLOWED HEIGHT LIMIT PER THE APPROVED PLAN CHECK. FOR QUESTIONS RELATED TO YOUR PLAN CHECK PLEASE CONTACT THE PLANNING DIVISION DIRECTLY AT 949-644-3204.

**ALL LISTED VIOLATIONS MUST BE CORRECTED ON OR BEFORE: Friday, December 15, 2023**

If the violations are not corrected by the date specified, an ADMINISTRATIVE CITATION may be issued and penalties will begin to accrue (\$100, \$200, \$300, \$500, \$600, \$1000, \$2000, \$3000) each day. Additional enforcement actions such as administrative citations, administrative penalties, prosecution and/or civil injunction may be utilized to correct this violation(s).

**A REINSPECTION WILL BE MADE ON OR AFTER THE CORRECTION DATE. IF THE CORRECTION(S) IS NOT COMPLETED, AN ADMINISTRATIVE CITATION MAY BE ISSUED AND FEES WILL BEGIN TO ACCRUE.**

The City of Newport Beach recognizes that oversights occur and challenges come up. We encourage you to contact the Code Enforcement Division for questions about this notice or to request an extension of time if one is needed. We understand the importance of working together and appreciate your cooperation in this matter.

Print Name of Officer: **Monique Navarrete**

Signature of Officer: *Monique Navarrete*

Officer ID#: 0398



# NOTICE OF VIOLATION

CITY OF NEWPORT BEACH  
COMMUNITY DEVELOPMENT DEPARTMENT  
Code & Water Quality Enforcement  
100 Civic Center Drive, Newport Beach, CA 92660  
949-644-3215

Name of Owner or Business: **GREGORY IRA CMGI REED**

Case #: **123-3980**

Date Established: **12/07/2023**

**PO BOX 1245  
NEWPORT BEACH, CA 92659**

Warning Only: **X**  
Previously Advised: **X**  
Final Warning: **X**

An inspection of the premises located at **1113 KINGS RD** on **Thursday, December 7, 2023**, revealed a violation(s) of the Newport Beach Municipal Code.

**NEWPORT BEACH MUNICIPAL CODE SECTION / DESCRIPTIONS OF VIOLATION:**  
**1) NBAC 105.1 BUILDING PERMIT REQUIRED**

**Correction(s) Required:**

1) THE WOOD FENCE (WEST SIDE) IS NOT CONSISTENT WITH PC2295-2019. PLEASE REMOVE AND REPLACE WITH MATERIALS APPROVED AND ENSURE THE FENCE DOES NOT EXCEED THE ALLOWED HEIGHT LIMIT PER THE APPROVED PLAN CHECK. FOR QUESTIONS RELATED TO YOUR PLAN CHECK PLEASE CONTACT THE PLANNING DIVISION DIRECTLY AT 949-644-3204.

**ALL LISTED VIOLATIONS MUST BE CORRECTED ON OR BEFORE: **Wednesday, December 27, 2023****

If the violations are not corrected by the date specified, an ADMINISTRATIVE CITATION may be issued and penalties will begin to accrue (\$100, \$200, \$300, \$500, \$600, \$1000, \$2000, \$3000) each day. Additional enforcement actions such as administrative citations, administrative penalties, prosecution and/or civil injunction may be utilized to correct this violation(s).

**A REINSPECTION WILL BE MADE ON OR AFTER THE CORRECTION DATE. IF THE CORRECTION(S) IS NOT COMPLETED, AN ADMINISTRATIVE CITATION MAY BE ISSUED AND FEES WILL BEGIN TO ACCRUE.**

The City of Newport Beach recognizes that oversights occur and challenges come up. We encourage you to contact the Code Enforcement Division for questions about this notice or to request an extension of time if one is needed. We understand the importance of working together and appreciate your cooperation in this matter.

Print Name of Officer: **Monique Navarrete**

Signature of Officer: *Monique Navarrete*

Officer ID#: 0398

# **Attachment C**

Building Official Determination Letter



CITY OF NEWPORT BEACH  
COMMUNITY DEVELOPMENT DEPARTMENT

100 Civic Center Drive  
Newport Beach, California 92660

949 644-3200  
newportbeachca.gov/communitydevelopment

May 1, 2024

Michael W. Shonafelt  
Newmeyer & Dillion LLP  
895 Dove Street, Fifth Floor  
Newport Beach, CA 92660  
Michael.Shonafelt@ndlf.com

Re: 1113 Kings Road - Unpermitted and Nonconforming Wooden Fence

Dear Mr. Shonafelt,

I am writing in response to your letter dated April 9, 2024 ("Your Letter"), in which you write on behalf of your client, Mr. Reed ("Your Client"), in regard to a number of notices of violation and administrative citations received from the City of Newport Beach ("City") due to a wooden fence built upon his property located at 1113 Kings Road. In Your Letter, you state that your office has not found any violation of the Newport Beach Municipal Code ("NBMC") or the California Building Code ("CBC") that prohibits the wooden fence.

Please note that NBMC 20.30.040(A)(1) states that the maximum height of a fence in a side setback area is six feet. The height of a fence is measured from "existing grade prior to construction." NBMC 20.30.040(D). The wooden fence at issue here, measured from *existing grade prior to construction*, exceeds six feet (being approximately nine feet) in height. Accordingly, the wooden fence at issue here violates NBMC height restrictions.

Due to the height exceeding six feet, a building permit application must be filed with the City, and approved, before the wooden fence can be built. California Building Code Section 105.1, states (emphasis added):

*Any owner or owner's authorized agent who intends to construct, enlarge, alter, repair, move, demolish or change the occupancy of a building or structure, or to erect, install, enlarge, alter, repair, remove, convert or replace any electrical, gas, mechanical or plumbing system, the installation of which is regulated by this code, or to cause any such work to be performed, shall **first** make application to the building official and obtain the required permit.*

In response to your comments as to whether the wooden fence complies with a prior building permit, PC 2295-2019, which authorized "wrought iron" railing, California case law holds that the rights granted by a permit are limited to those specifically stated in the permit. *Russ Bldg. Partnership v City & County of San Francisco*, 44 Cal. 3d 839, 853-854 (1988) (holding that permittees had no greater rights than those granted them under the permit and stating, "[t]o the extent plaintiffs relied on their own self-serving

interpretation ... such reliance must be considered unreasonable"); accord, *Attard v. Board of Supervisors of Contra Costa County*, 14 Cal. App. 5th 1066 (2017). In this case, and as you acknowledge in Your Letter, PC 2295-2019, Sheet TS3, Detail 6, expressly authorized "wrought iron" railing, but did not authorize a 'wooden' fence. Accordingly, the authorization granted by PC 2295-2019 to construct wrought iron railing does not confer on Your Client the right to construct the wooden fence.

Additionally, the reason the wrought iron railing was approved by the Planning Division was because it was considered to be a guardrail for safety. In general, a guardrail may sometimes be approved as an exception to height limitations for safety purposes. See, e.g., NBMC 20.30.040(A)(2), (C)(1), and (C)(3)(b). Guardrails are "constructed of open grillwork, wrought iron, latticework, pickets, or similar materials so that at least forty (40) percent of the fence is open." *Id.* By contrast, a "fence" is defined as a "solid structure that is a barrier and used as a boundary or means of protection, confinement, or concealment." NBMC 20.70.20(F). Therefore, the wooden fence Your Client constructed is not within the scope of PC 2295-2019 because it constitutes a fence, rather than a guardrail. Likewise, your offer to install a wrought iron barrier of a "substantially closed design" would be noncompliant because it would also constitute a fence. As explained above, a fence would be prohibited because it would violate the maximum height requirement of NBMC 20.30.040(A)(1).

Even assuming, *arguendo*, that PC 2295-2019 authorized a 'fence' in the subject location, such authorization would be invalid because a permit cannot authorize a violation of applicable codes. CBC 105.4 ("[t]he issuance or granting of a permit shall not be construed to be a permit for, or an approval of, any violation of any of the provisions of this code or of any other ordinance of the jurisdiction"); *Pettitt v. City of Fresno*, 34 Cal. App. 3d 813, 824 (1973) (holding a permit to be "invalid from the beginning because issued in violation of the zoning law for the area"); *Attard v. Board of Supervisors of Contra Costa County*, 14 Cal. App. 5th 1066, 1077 (2017) ("... a permit may insulate a party against subsequent changes in the law, [but] it cannot create a vested right to construct or use property in violation of laws in effect at the time of issuance of the permit"). In other words, if PC 2295-2019 authorized a wrought iron 'fence,' and by extension, a wooden 'fence,' then both would be invalid because a fence, constructed of either material, would be a violation of the height restrictions of NBMC 20.30.040(A)(1).

Last, we would like to point out that if Your Client's intent when requesting the wrought iron railing was privacy and concealment, Your Client should have clearly requested a substantially closed design, such as the wooden fence, in his application for building permit PC 2295-2019. Had Your Client done so, the matter could have been addressed at the outset. Instead, Your Client requested the open-faced wrought iron railing. Furthermore, Your Client did, in fact, build the wrought iron railing in conformity with building permit PC 2295-2019. It was only after this work was completed that Your Client, without notification to the City, and without applying for a new building permit, took the initiative to remove the wrought iron railing and replace it with the wooden fencing.



Michael W. Shonafelt

May 1, 2024

Page 3

Although we are not accusing Your Client of any intentional misconduct, please note that a building permit is invalid if it was issued based on an applicant's misrepresentation. *Autopsy/Post Services, Inc. v. City of Los Angeles*, 129 Cal. App. 4th 521 (2005) (building permit invalid where applicant withheld from agency the intended purpose); *Stokes v. board of Permit Appeals*, 52 Cal. App. 4th 1348 (1997) (permits invalid when issued based on misrepresentation of applicant).

I hope that the forgoing sufficiently explains why a building permit is required, and why the wooden fence is noncompliant. The City respectfully requests Your Client promptly take action to correct these issues and bring his property into compliance. No building permit is required to remove the wooden fencing.

Finally, please be advised that I have consulted with the City Attorney's Office and have been instructed to inform you that if the wooden fence is not removed within **ten (10) calendar days** of the date of this letter, then the City will be forced to take legal action.

Cordially,



Tonee Thai  
Chief Building Official  
City of Newport Beach

cc: Aaron Harp, City Attorney

# **Attachment D**

CBC Section 105.1 Excerpt

## SCOPE AND ADMINISTRATION

2. A determination that failure to grant the variance would result in exceptional hardship by rendering the lot undevelopable.
3. A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, cause fraud on or victimization of the public, or conflict with existing laws or ordinances.
4. A determination that the variance is the minimum necessary to afford relief, considering the flood hazard.
5. Submission to the applicant of written notice specifying the difference between the design flood elevation and the elevation to which the building is to be built, stating that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced floor elevation, and stating that construction below the design flood elevation increases risks to life and property.

**[A] 104.11 Alternative materials, design and methods of construction and equipment.** The provisions of this code are not intended to prevent the installation of any material or to prohibit any design or method of construction not specifically prescribed by this code, provided that any such alternative has been approved. An alternative material, design or method of construction shall be approved where the building official finds that the proposed alternative meets all of the following:

1. The alternative material, design or method of construction is satisfactory and complies with the intent of the provisions of this code,
2. The material, method or work offered is, for the purpose intended, not less than the equivalent of that prescribed in this code as it pertains to the following:
  - 2.1. Quality.
  - 2.2. Strength.
  - 2.3. Effectiveness.
  - 2.4. Fire resistance.
  - 2.5. Durability.
  - 2.6. Safety.

Where the alternative material, design or method of construction is not approved, the building official shall respond in writing, stating the reasons why the alternative was not approved.

*[DSA-SS, DSA-SS/CC & OSHPD 1, IR, 2, 4 & 5] Alternative system shall satisfy ASCE 7 Section 1.3, unless more restrictive requirements are established by this code for an equivalent system.*

*[DSA-SS, DSA-SS/CC] Alternative systems shall also satisfy the California Administrative Code, Section 4-304.*

*[OSHPD 1, IR, 2, 4 & 5] Alternative systems shall also satisfy the California Administrative Code, Section 7-104.*

**[A] 104.11.1 Research reports.** Supporting data, where necessary to assist in the approval of materials or assem-

blies not specifically provided for in this code, shall consist of valid research reports from approved sources.

**[A] 104.11.2 Tests.** Whenever there is insufficient evidence of compliance with the provisions of this code, or evidence that a material or method does not conform to the requirements of this code, or in order to substantiate claims for alternative materials or methods, the building official shall have the authority to require tests as evidence of compliance to be made without expense to the jurisdiction. Test methods shall be as specified in this code or by other recognized test standards. In the absence of recognized and accepted test methods, the building official shall approve the testing procedures. Tests shall be performed by an approved agency. Reports of such tests shall be retained by the building official for the period required for retention of public records.

**104.11.3 Peer review.** *[OSHPD 1, IR, 2, 4 & 5] When peer review is required for new or existing buildings, it shall be performed pursuant to Section 1617A.1.41.*

**104.11.4 Earthquake monitoring instruments.** *[OSHPD 1 & 4] The enforcement agency may require earthquake monitoring instruments for any building that receives approval of an alternative system for the Lateral Force Resisting System (LFRS). There shall be a sufficient number of instruments to characterize the response of the building during an earthquake and shall include at least one tri-axial free field instrument or equivalent. A proposal for instrumentation and equipment specifications shall be forwarded to the enforcement agency for review and approval.*

*The instruments shall be interconnected for common start and common timing. Each instrument shall be located so that access is maintained at all times and is unobstructed by room contents. A sign stating "MAINTAIN CLEAR ACCESS TO THIS INSTRUMENT" shall be posted in a conspicuous location.*

*The Owner of the building shall be responsible for the implementation of the instrumentation program. Maintenance and service of the instruments shall be in accordance with Appendix L, Section 1.101.3 of Part 2, Volume 2 of the California Building Code.*

## SECTION 105 PERMITS

**[A] 105.1 Required.** Any owner or owner's authorized agent who intends to construct, enlarge, alter, repair, move, demolish or change the occupancy of a building or structure, or to erect, install, enlarge, alter, repair, remove, convert or replace any electrical, gas, mechanical or plumbing system, the installation of which is regulated by this code, or to cause any such work to be performed, shall first make application to the building official and obtain the required permit.

**[A] 105.1.1 Annual permit.** Instead of an individual permit for each alteration to an already approved electrical, gas, mechanical or plumbing installation, the building official is authorized to issue an annual permit upon application therefor to any person, firm or corporation regularly

employing one or more qualified tradespersons in the building, structure or on the premises owned or operated by the applicant for the permit.

**[A] 105.1.2 Annual permit records.** The person to whom an annual permit is issued shall keep a detailed record of alterations made under such annual permit. The building official shall have access to such records at all times or such records shall be filed with the building official as designated.

**[A] 105.2 Work exempt from permit.** Exemptions from permit requirements of this code shall not be deemed to grant authorization for any work to be done in any manner in violation of the provisions of this code or any other laws or ordinances of this jurisdiction. Permits shall not be required for the following:

**Building:**

1. One-story detached accessory structures used as tool and storage sheds, playhouses and similar uses, provided that the floor area *does not exceed* 120 square feet (11.15 m<sup>2</sup>). *It is permissible that these structures still be regulated by Section 710A, despite exemption from permit.*
2. Fences not over 7 feet (2134 mm) high.
3. Oil derricks.
4. Retaining walls that are not over 4 feet (1219 mm) in height measured from the bottom of the footing to the top of the wall, unless supporting a surcharge or impounding Class I, II or IIIA liquids.
5. Water tanks supported directly on grade if the capacity is not greater than 5,000 gallons (18 925 L) and the ratio of height to diameter or width is not greater than 2:1.
6. Sidewalks and driveways not more than 30 inches (762 mm) above adjacent grade, and not over any basement or story below and are not part of an accessible route.
7. Painting, papering, tiling, carpeting, cabinets, counter tops and similar finish work.
8. Temporary motion picture, television and theater stage sets and scenery.
9. Prefabricated swimming pools accessory to a Group R-3 occupancy that are less than 24 inches (610 mm) deep, are not greater than 5,000 gallons (18 925 L) and are installed entirely above ground.
10. Shade cloth structures constructed for nursery or agricultural purposes, not including service systems.
11. Swings and other playground equipment accessory to detached one- and two-family dwellings.
12. Window awnings in Group R-3 and U occupancies, supported by an exterior wall that do not project more than 54 inches (1372 mm) from the exterior wall and do not require additional support.

13. Nonfixed and movable fixtures, cases, racks, counters and partitions not over 5 feet 9 inches (1753 mm) in height.

**Electrical:**

1. **Repairs and maintenance:** Minor repair work, including the replacement of lamps or the connection of approved portable electrical equipment to approved permanently installed receptacles.
2. **Radio and television transmitting stations:** The provisions of this code shall not apply to electrical equipment used for radio and television transmissions, but do apply to equipment and wiring for a power supply and the installations of towers and antennas.
3. **Temporary testing systems:** A *permit* shall not be required for the installation of any temporary system required for the testing or servicing of electrical equipment or apparatus.

**Gas:**

1. Portable heating appliance.
2. Replacement of any minor part that does not alter approval of equipment or make such equipment unsafe.

**Mechanical:**

1. Portable heating appliance.
2. Portable ventilation equipment.
3. Portable cooling unit.
4. Steam, hot or chilled water piping within any heating or cooling equipment regulated by this code.
5. Replacement of any part that does not alter its approval or make it unsafe.
6. Portable evaporative cooler.
7. Self-contained refrigeration system containing 10 pounds (4.54 kg) or less of refrigerant and actuated by motors of 1 horsepower (0.75 kW) or less.

**Plumbing:**

1. The stopping of leaks in drains, water, soil, waste or vent pipe, provided, however, that if any concealed trap, drain pipe, water, soil, waste or vent pipe becomes defective and it becomes necessary to remove and replace the same with new material, such work shall be considered as new work and a permit shall be obtained and inspection made as provided in this code.
2. The clearing of stoppages or the repairing of leaks in pipes, valves or fixtures and the removal and reinstallation of water closets, provided that such repairs do not involve or require the replacement or rearrangement of valves, pipes or fixtures.

**[A] 105.2.1 Emergency repairs.** Where equipment replacements and repairs must be performed in an emergency situation, the permit application shall be submitted

# **Attachment E**

Draft Decision



**CITY OF NEWPORT BEACH  
COMMUNITY DEVELOPMENT DEPARTMENT**

100 Civic Center Drive  
Newport Beach, California 92660  
949 644-3200  
newportbeachca.gov/communitydevelopment

**BUILDING AND FIRE BOARD OF APPEALS  
APPEAL OF CHIEF BUILDING OFFICIAL'S DETERMINATION  
RE 1113 KINGS ROAD**

**DECISION**

The City of Newport Beach Board of Appeals ("Board") heard the appeal of Greg Reed ("Appellant") of the City's Chief Building Official's ("Building Official") determination regarding the unpermitted construction at 1113 Kings Road ("Property") at a noticed public hearing conducted in the **Newport Beach Civic Center, Corona del Mar Conference Room (100 Civic Center)** on **September 10, 2024, at 3:30 p.m.**

Appellant appealed the Building Official's determination that Appellant must first apply for a building permit before replacement of existing wrought iron guardrail with a wooden fence, pursuant to the current California Building Code.

The Board reviewed the evidence submitted by the Appellant, City of Newport Beach staff, and the public, and heard testimony. The Board finds that:

- The Property had permitted construction of a wrought iron guardrail on the west side of the Property located on top of a retaining wall;
- The Appellant replaced the permitted wrought iron guardrail on the west side of Property with a wooden fence without first applying for a City building permit; and
- The applicable California Building Code, Section 105.1, as adopted and amended by the City, is as follows:

*Any owner or owner's authorized agent who intends to construct, enlarge, alter, repair, move, demolish or change the occupancy of a building or structure, or to erect, install, enlarge, alter, repair, remove, convert or replace any electrical, gas, mechanical or plumbing system, the installation of which is regulated by this code, or to cause any such work to be performed, shall first make application to the building official and obtain the required permit.*

Having fully considering the matter, the Board finds that California Building Code Section 105.1 requires application for a building permit for construction of the wooden fence on top of the existing retaining wall. Accordingly, the Board affirms the Building Official's determination requiring application for a building permit for the construction of the wooden fence on top the existing retaining wall on the west side of the Property.

Vote:

**PARTICIPANTS**

Board of Appeals Members Present:

Appellant: Greg Reed

City Staff: Tonee Thai, Deputy Community Development Director/Chief Building Official;  
Joseph Meeks, Deputy City Attorney;  
Jaime Murrillo, Deputy Community Development Director - Planning

Other Participants:

\_\_\_\_\_  
Khosrow Nourmohammadi, Chair

\_\_\_\_\_  
Date

# **Attachment F**

Appellant's Submitted Materials





# Appeal Application

City Clerk's Office  
100 Civic Center Drive / P.O. Box 1768  
Newport Beach, CA 92658-8915  
949-644-3005

Clerk's Date & Time Stamp

MAY 14 '24 PM3:46  
REC'D CITY CLERKS OFFIC

Appeals are time sensitive and must be received by the City Clerk within the specified time period from a decision or final action by a decision-maker. It is advisable to consult with the Department managing the issue if there is question with regards to appealing an action. This is an appeal of the:

- (CDD222) Community Development Director Action to the Planning Commission - \$2116
- (CDD222) Zoning Administrator Action to the Planning Commission - \$2116
- (CDD222) Coastal Development Application CDP Appeal from Zoning Admin to the Planning Commission (only if appeal is solely based on the CDP portion of the application) - No Fee
- (CDD222) Planning Commission Action to the City Council - \$2116
- (CDD222) Community Development Director Action to the Harbor Commission - \$1250
- (CDD222) Harbor Commission Action to the City Council (CDD - Planning) - \$940
- (CDD222) Hearing Officer Action to the City Council - \$2116
- (CDD223) Building Official/Fire Marshal Action to the Building/Fire Board of Appeals - \$1768
- (CDD224) Chief of Police Action on an Operator License to the City Manager - \$1000
- (RSS073) City Manager Action on a Special Events Permit to the City Council - \$1890
- (HBR001) Harbormaster Action to the Harbor Commission - \$1250
- (HBR001) Harbor Commission Action to the City Council (Harbor Department) - \$940
- (PBW018) Public Works Director Action to Harbor Commission - \$1250
- (PBW018) Harbor Commission Action to City Council (Public Works Department) - \$940
- Other - Specify decision-maker, appellate body, Municipal Code authority and fee: \_\_\_\_\_

### Appellant Information:

Name(s): SEE ATTACHED

Address: \_\_\_\_\_

City/State/Zip: \_\_\_\_\_

Phone: \_\_\_\_\_ Email: \_\_\_\_\_

### Appealing Application Regarding:

Name of Applicant(s): \_\_\_\_\_ Date of Final Decision: \_\_\_\_\_

Project No.: \_\_\_\_\_ Activity No.: \_\_\_\_\_

Application Site Address: \_\_\_\_\_

Description of application: \_\_\_\_\_

Reason(s) for Appeal (attach a separate sheet if necessary): \_\_\_\_\_

Signature of Appellant: \_\_\_\_\_ Date: \_\_\_\_\_

### FOR OFFICE USE ONLY:

Date Appeal filed and Administrative Fee received: May 14, 2024.

[Signature]  
City Clerk

cc: Department Director, Deputy Director, Staff, File





BUILDING AND FIRE BOARD OF APPEALS
APPLICATION FOR:

APPEAL RATIFICATION

City of Newport Beach
Building Division

100 Civic Center Drive, Newport Beach, CA 92660
(949) 644-3200

- Application is hereby made for an Appeal of decisions, determination or interpretation of the Chief Building Official as provided in Chapter 15.80 of the Newport Beach Municipal Code.
Application is hereby made for Ratification of decisions, determination or interpretation of the Chief Building Official as required by California Building Code, Chapter 1, Division 1, Section 1.9.1.5.
Application is hereby made for an Appeal of decisions, determination or interpretation of the Chief Fire Marshall as provided in Chapter 15.80 of the Newport Beach Municipal Code.

(For staff use only)
Accepted by:
Case No.: BA2024-01
Fee: \$1,750
Date:

PLEASE NOTE: A completed application must be received no later than four weeks prior to a Board's scheduled hearing to be considered for that hearing.

PLEASE PRINT IN INK OR TYPE ALL INFORMATION
(If more space is required for reply, please attach additional sheets.)

Building Owner: Greg Reed Phone: 949.271.6342
Owner's Address: 1113 Kings Road Newport Beach CA 92663
Street City State Zip

Contact Person or Applicant:
(if other than owner): Phone:

Applicant's Address:
Street City State Zip

Address or location of property, which is subject of the request: 1113 Kings Road

Description of any proposed buildings or structures or alterations of existing buildings located or to be located on said premises. Provide permit or plan check number where applicable: Retaining wall guardrail along west side of property line in side-yard setback. PC 2295-2019.

Has a documentation of unreasonable hardship or a request for modification or alternate methods & materials been filed? YES NO x
If Yes, please attach a copy of that request and result if applicable.

Cite specific section and subsection of the California Building Code from which an appeal or ratification is being requested. Attach two sets of all sketches, drawings or diagrams [one full size set and 12 sets no larger than 8 1/2 x 14]: Appeal is being requested from a City misapplication and misinterpretation of City of Newport Beach Municipal Code section 20.30.040 and the CBC and the City's unlawful issuance of notice of violation based on those sections.

Please state the action you are appealing or that is to be ratified and the date of the action:
Appeal is taken from the May 1, 2024, letter of Tonee Thai to Michael W. Shonafelt, which states the City's position regarding this matter.

Justification (state reasons for your appeal or ratification request. Attach additional sheets if necessary)
See attached letter dated April 9, 2024. Applicant reserves the right to supplement the reasons for the appeal prior to the appeal hearing.

Applicant signature: Greg Reed Date: 5/13/2024

Receipt No. and stamp:

**Information on Procedure for Appeal from a Determination or Action by the Chief Building Official or Fire Code Official**

Appeal from the determination or action of the Chief Building Official or Fire Code Official or their designated agent may be made to the Building and Fire Board of Appeals. To appeal, the applicant must provide special individual reasons that make compliance with the strict letter of the Code impractical. Appeals or ratifications pertaining to State Disabled Access Standards require complete evidence to substantiate that the proposed design is equivalent to that prescribed by that standards or that due to legal or physical constraints, compliance with the standards or providing equivalency would create an unreasonable hardship.

Appeals must be submitted on the Appeal Form available at Permit Counter accompanied by the proper fee. You will be notified in writing of the appeal hearing's time and date.



Newmeyer & Dillion LLP  
895 Dove Street  
Fifth Floor  
Newport Beach, CA 92660  
949 854 7000

April 9, 2024

Michael W. Shonafelt  
Michael.Shonafelt@ndlf.com

**VIA EMAIL**

Tonee Thai  
Chief Building Official  
City of Newport Beach  
100 Civic Center Drive  
Newport Beach, CA 92660  
tthai@newportbeachca.gov

Re: 1113 Kings Road PC 2295-2019: Notices of Violation

Dear Mr. Thai,

This office represents Gregory I. Reed ("Owner"), owner of 1113 Kings Road ("Property") in the City of Newport ("City"). This responds to one or more "Notice[s] of Administrative Citation" concerning purported violation of the City of Newport Beach Municipal Code ("NBMC") related to a guardrail fence topping a retaining wall on the west side of the Property ("Notice"). The Notice asserts that the guardrail fence "is not consistent" with building permit construction drawings ("Building Permit Plans") for the west retaining wall, presumably because it is constructed with wood as opposed to wrought iron. While not explicit in the Notice, we understand there may also be concerns that the railing fence is not "open" or does not otherwise provide spacing between slats or pickets.

Our office has reviewed the Notice to understand the basis of the purported violation. That analysis has not revealed any violation of the NBMC, the California Building Code ("CBC") or, necessarily, the Building Plans. With specific regard to the NBMC and the CBC, we found no provision that prohibits a wooden railing fence consistent with the as-built condition of the west retaining wall. Nor do we find any provision requiring use of wrought iron or any minimum spacing requirements for fence elements. In fact, where the NBMC expressly requires "open" grillwork, wrought iron, latticework, spaced pickets or similar materials, it is with specific regard to railings on walls located at the front setback (NBMC, § 20.30.040.A.C.1) or with respect to specific neighborhoods located within the City (*id.*, § 20.30.040.B). It is a fundamental canon of statutory construction that the expression of one thing implies the exclusion of others. (*Rojas v. Superior Court* (2004) 33 Cal.4th 407, 424.) In this case, the Code's identification of specific

Tonee Thai  
Chief Building Official  
City of Newport Beach  
April 9, 2024  
Page 2

instances where open fencing is required necessarily implies that solid fencing is allowed everywhere else. Nor did we find any more general requirement for open fencing elements or materials that could be applicable to a side-yard within this neighborhood of the City.


The only reference to wrought iron is a single note on one page in the Building Plans. (1113 Kings Road PC 2295-2019- Construction Drawings [herein defined as "Building Plans,"] p. TS3.) That note features a reference to a 42-inch high railing of "wrought iron fence with openings not to allow 4" sphere to pass through," the wording of the note does not, perforce, mandate minimum openings in the fencing material, only openings that are not so large as to allow a four-inch ball to pass through. Nor does it expressly preclude use of other materials for the fence railing. In fact, the as-built condition complies with every applicable standard that we found, as set forth in either the CBC or the NBMC, and otherwise substantially conforms to the approved Building Plans.

Notwithstanding the above and Owner's objections to any claim of violation, Owner is willing to replace the as-built wooden guardrail fence with a wrought iron fence of a design substantially closed design. We must insist on a design that maintains an appropriate level of both safety and privacy, and the proposed design is intended to achieve both of those objectives. The Owner is entitled to both privacy and safety as essential elements of his fundamental right to quiet enjoyment of the Property.

Please advise the undersigned of the City's position on this matter, as well as any appropriate channel for administrative appeal of the City's decision, in writing, no later than **close of business, April 17, 2024**. This deadline is intended for no other purpose than to ensure clarity of the City's position and the grounds therefor -- as well as to facilitate a clear channel of administrative redress. To that end, we will deem any adverse response or any failure to respond as a basis for administrative redress through NBMC chapter 15.80 and/or other relevant code provisions.

If you have any question concerning this letter, please do not hesitate to call me.

Very truly yours,



Michael W. Shonafelt

MWS

9999.MWS / 15638568.2

Tonee Thai  
Chief Building Official  
City of Newport Beach  
April 9, 2024  
Page 3

cc: James Campbell, Deputy Director, Community Development  
([jcampbell@newportbeachca.gov](mailto:jcampbell@newportbeachca.gov))  
Aaron C. Harp, Esq., City Attorney ([aharp@newportbeachca.gov](mailto:aharp@newportbeachca.gov))  
Greg Reed, ([greg@goldenbearequities.com](mailto:greg@goldenbearequities.com))

9999.MWS / 15638568.2

City of Newport Beach  
Revenue  
100 Civic Center Dr.  
Newport Beach, CA 92660  
949-644-3141  
Welcome

05/14/2024 03:57PM Holly W.  
017834-0006 000093956

MISCELLANEOUS

BUILDING APPEALS  
(CDD223)

2024 Item: CDD223  
1 @ \$1,768.0000

BUILDING APPEALS  
(CDD223)

\$1,768.00

-----  
\$1,768.00

Subtotal

\$1,768.00

Total

\$1,768.00

CHECK

\$1,768.00

Check Number 514418

Change due

-----  
\$0.00

Paid by: CDD

Thank you for your payment

CUSTOMER COPY

SOUTHERN CALIFORNIA LEGAL  
SUPPORT SERVICES, INC.  
600 W SANTA ANA BLVD STE 101  
SANTA ANA, CA 92701

17834-6

514418

11-257210

5-14-24

DATE

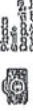
REFUNDATOR

\$ 1,768.00

PAY TO THE ORDER OF

City of Newport Beach

One thousand - Seven hundred - Sixty - eight - Dollars



DOLLARS

NOT TO EXCEED \$100,000  
FOR DEPOSIT ONLY

BANK OF AMERICA  
CALIFORNIA

12055824

FOR

