

Ken Jacobs  
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Sebastopol, CA 95472  
[REDACTED]  
[REDACTED]

March 16, 2023

DRB/Tree Board  
City of Sebastopol  
VIA EMAIL to [jjay@cityofsebastopol.org](mailto:jjay@cityofsebastopol.org); [kvanstrom@cityofsebastopol.org](mailto:kvanstrom@cityofsebastopol.org)

RE: Design Review, Tree Removal, Tree Protection Plan for 771 and 773 First Street  
File 2021-28

Dear DRB/Tree Board,

I am fully in favor of Steve and Rose Schoch being approved to build a home on their First Street property<sup>1</sup>. However, to be approved that home must comply with both our Zoning Ordinances, and with the Conditions of Approval which were agreed to by Steve's father and the City when the Schoch Subdivision was negotiated and eventually approved back in 2001. The current plan as submitted violates both Section [17.100.060](#) of the Sebastopol Municipal Code (Creek Setback) and Condition M8 of the Conditions of Approval. Therefore, I urge the DRB to deny this application in its current form.

**1. This Application Must Be Denied Pursuant to  
Sebastopol Municipal Code Section [17.100.060](#).**

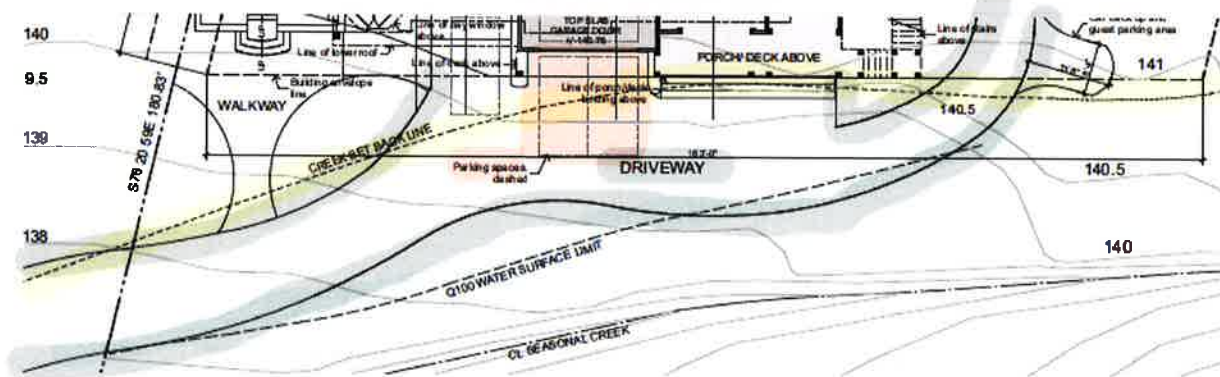
Sebastopol Municipal Code Section 17.100.060 (Creek Setback) provides in part:

**"A minimum setback of 30 feet from top of bank shall be provided for any buildings, mobile homes, garages, swimming pools, storage tanks, parking spaces, driveways, decks more than 30 inches above natural grade, retaining walls, or other similar structures for property adjacent to Zimpher Creek, Calder Creek, or Atascadero Creek...."** (emphasis added)

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<sup>1</sup> The applicant's representative Greg Beale stated incorrectly at the June 16, 2021, DRB meeting that "Ken Jacobs was the biggest opponent to this subdivision to begin with...". If Mr. Beale were to review the public record of the city hearings on this subdivision from 2000 and 2001 he would see that while Paul Schoch and I had a disagreement as to the access to the property via First Street or the Hayden Extension, I was never opposed to the subdivision nor the property owner's right to develop their property. Likewise, Mr. Beale's assertion in his 12/12/2022 Written Statement that "the Hayden extension was still part of the proposed subdivision at the time it was written" (apparently in order to alter which neighboring homes are to be considered for purposes of applying Condition M8) is patently untrue as evidenced by Condition P2 of the Subdivision Approval which states, "All access for the subdivision shall be provided from First Street, and the subdivision map shall be revised to so indicate. No access shall be provided from the Hayden Avenue Extension."

The applicant's design shows the 30 foot set-back line, and Calder Creek, as follows:



The creek setback is indicated on the subdivision map and labeled CREEK SET BACK LINE. The proposed structure is shown to be placed right up to the setback. However, the plans as submitted also show a driveway, parking spaces, and a portion of a deck within the required 30 foot setback. Because of this, the plans do not comply with the requirement of Section 17.100.060 that **driveways, parking spaces, and decks shall be set back at least 30 feet from the top of bank of Calder Creek<sup>2</sup>**. Further, the driveway appears to not only encompass the entire mandatory setback, it actually intrudes into the creek bed itself where it extends westerly over the Q100 Water Surface Limit line.

The plans as presented clearly violate Municipal Code Section [17.100.060](#) with regard to the mandatory Calder Creek setback, and therefore cannot be approved in their current form.

## 2. This Application Must Be Denied in that it Fails to Comply With Condition of Approval M8

Condition of Approval M8, which limits the size of the houses to be built on this subdivision, has been the topic of much discussion and debate. Condition M8 reads as follows:

“The homes to be built within this project shall be subject to the review and approval of the Sebastopol Design Review Board. The Board will be guided in their review of the proposal by their adopted Project Review Guidelines; by the design criteria set forth in the General Plan, and by the following infill development standard: In general, the size and height of the homes to be constructed within this subdivision shall not exceed those of similar homes of more recent construction in the general area, including both the First Street area and the Swain Woods neighborhood (Jewell near Hayden).”

<sup>2</sup> It should be noted this is the same Calder Creek that just downstream is subject to a Restoration Project currently being implemented by the City.

There was extensive discussion at the August 18, 2021 meeting regarding Condition of Approval M8. Further, the entire three hour meeting on January 5, 2022 was solely devoted to this issue. In fact, at the January 5, 2022 meeting, you gave this applicant specific guidance regarding your interpretation of condition M8. **You agreed that condition M8 means that the proposed house cannot exceed 125% of the average size of homes built within 600 feet since 1990.**

Little has changed since you interpreted condition M8 over fourteen months ago. Other than lawyer letters and litigation threats, there is really nothing new here. They did make a few minor design changes, including creating a “cave” on the ground floor, which slightly reduces the square footage but does not change the overall footprint or mass at all. In any event this slight reduction in square footage does not meet or address your advice regarding M8, nor did the applicant compile the neighborhood data you requested at the January 2022 meeting.

Furthermore, the applicant's 12/12/2022 Written Statement states, “The DRB's motions to add language to M8 was deemed non-binding by City's outside council.” This statement is misleading for two reasons:

One, the DRB did not “add language” to M8. Rather you interpreted M8, as you would interpret any other condition of approval or ordinance. This is in fact the responsibility of the DRB and something you do each and every time you review a project.

Second, while the January 24, 2022 letter from the outside counsel does say that your interpretation of M8 is “non-binding”, mentioning that out of context is totally misleading. A complete reading of that letter clearly shows the issue was whether your interpretation of M8 at the January 5, 2022 meeting was something that could be appealed to the City Council. What happened was the applicant didn't like your interpretation of M8, so they tried to appeal to the City Council by making all kinds of accusations against you, the DRB. However, the outside council and city attorney determined that they could not appeal since the DRB had not taken a final action on the application. This is an important distinction. The issue in that letter was simply and only whether your interpretation of M8 was something that could be appealed, and not whether your interpretation was appropriate. The conclusion was it was not a final action so it could not be appealed<sup>3</sup>. But that does not mean anything was wrong with your interpretation of M8.

Through this twisted interpretation the applicant now seems to be asking you to re-do your January 5, 2022 meeting by throwing out your well-reasoned interpretation and reinterpreting M8 to meet their demands. Remember, you spent three hours discussing and debating this last January. Your interpretation of M8 was consistent with recommendations of the city planners in the staff report for the January 2022 meeting. You had long conversations about things such as the fact that the phrase “those of

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<sup>3</sup> Once you take final action, including a denial of the application, the Applicant can appeal to the City Council pursuant to Municipal Code section 17.455.020(B)

similar homes” as used in M8 is plural, inferring an average. And you talked about how in the Conditions of Approval the City Council could have said “no larger than the largest home” if that was what they intended, but they didn’t, they used the word “homes”. You talked about a common sense approach, and the common understanding that the homes to be built on the Schoch subdivision would be similar in size to the neighbors.

Again, nothing has changed except for lawyer letters. I submit to you that a threat of litigation is not something the DRB needs to consider, or even should consider, in the analysis of any design application. You gave your design guidance, you interpreted M8 as it applies to this project, and you did your job as the DRB. But the applicant did not follow your guidance. Instead, their attorney wrote letters. You are the Design Review Board, not the city attorney’s office. Last January you did your design review, and instead of accepting your design guidance, or even coming back to discuss or negotiate, they brought in their lawyer. If I were you, I would be outraged.

### **3. Conclusion**

As mentioned, I am not opposed to Steve and Rose Schoch building their home. But thus far they have been unwilling to design a home that fits within the limited footprint available due to the mandatory setbacks, and with a size that is similar to the neighbors. Frankly, the home as designed cannot work on that property. It is simply too massive.

I understand Rose & Steve are frustrated with the process. I received a “Dear Neighbors” email from them on March 10 in which they express their dismay, a copy of which is attached. While I sympathize, I hope Rose & Steve are willing to take a another look at this, and design a house that better fits this location.

In the meantime, I urge the DRB to deny this application based its failure to comply with Section 17.100.060 of the Sebastopol Municipal Code (Creek Setback) and Condition M8 of the Conditions of Approval.

Respectfully,



Ken Jacobs

From: [REDACTED]  
Subject: Status of First Street Project  
Date: March 10, 2023 at 6:47 PM  
To: [REDACTED]



Dear Neighbors:

It has come to our attention that the DRB meeting on Feb. 28<sup>th</sup> regarding our project on First Street was once again totally unproductive and a complete waste of time. We were traveling at the time and did not have access to the internet. Now that we are back, we feel it important to share with you the status of our project.

Regarding the timing and notification about the DRB meetings, the DRB does not tell us their schedule and we only find out about it around the same time as all of you. We've been trying to get a meeting going with them without success since last year. All the necessary documents were given to them 5 months ahead of time, yet they claim they need more time and continue to delay us. This has been going on for over three years and is extremely frustrating and stressful. Not only does it delay the project but also costs us more money with every delay.

Some of the neighbors had issues with the size of the house. The permitted building envelope for our property is very small, relative to the size of the lot due to the creek setback. The ratio of the building envelope to lot size is the lowest compared to all other properties in the area. Not only that, but the rules require us to build an ADU, reducing the size for our main house even further. Because of this, our design puts the garage and workshop together in the same building as the main house. This keeps the affected area smaller as the other alternatives would be to build multiple outbuildings as you see in many other lots in the area, which leads to a more "junky" appearance, and also has a bigger effect on the natural habitat. We have already eliminated several highly desirable rooms to reduce the overall size and footprint. Every consideration in our design was given to maximizing the preservation of the natural habitat. This, however, never ended up being discussed because the members of the DRB neglected to review the documents. The DRB are the ones who is delaying this project, not us. Their neglect is one of the reasons why we stopped attending the DRB meetings.

To require a DRB for a single family home is extremely unusual in the first place. It was a requirement by the City of Sebastopol as a result of the subdivision of the lot into three parts. It is our opinion that the DRB is incompetent and disorganized. We are not responsible for their incompetence. Right from the very start, they had made up their minds that we are from some dot com company coming to taking over the town; never mind that Steve is a native Sebastopolian. We have been more than patient but our patience is running thin. According to the initial proposed plans, the house should have been built by now. Here we are three years later and we still have not even received approval yet.

The general feeling we get from some of the neighbors is that they would prefer to have absolutely no development on our lot, and leave it as a natural "park". For this to happen, the best way would be to have a government or non-government entity purchase our lot, maintain it, and turn it into a real park or a nature preserve. In the 20+ years that we have owned the lot, we have never received an offer to purchase it for such a purpose. Should we receive such an offer for the right price, we would welcome it. So if any one of you know someone or some organization who might be interested, please let us know. This whole situation has left a bad taste in our mouths both with the City and with some of the neighbors.

We hope this letter gives you all a glimpse of the challenges we are dealing with and why this project has stalled for such a long time. Please don't hesitate to reach out to us with any comments or concerns. Our contact info is as follows:

Steve: [REDACTED]  
Rose: [REDACTED]

Best regards,

Steve & Rose Schoch