



**CONTRA COSTA COUNTY  
DEPARTMENT OF CONSERVATION AND DEVELOPMENT  
COMMUNITY DEVELOPMENT DIVISION**

**APPROVED PERMIT**

|            |  |                        |                                    |
|------------|--|------------------------|------------------------------------|
| APPLICANT: | Tom Dudley<br>1267 Springbrook Road<br>Walnut Creek, CA 94597      | APPLICATION NO.:       | CDVR23-01062                       |
|            |  | ASSESSOR'S PARCEL NO.: | 194-070-083                        |
|            |  | PROJECT LOCATION:      | 1914 Green Valley Rd.<br>Alamo, CA |
| OWNER:     | Hugh Stephen Mcdonald<br>1914 Green Valley Road<br>Alamo, CA 94507 | ZONING DISTRICT:       | R-20                               |
|            |  | APPROVED DATE:         | August 30, 2024                    |
|            |  | EFFECTIVE DATE:        | September 10, 2024                 |

Unless this matter is appealed within the period of time prescribed by law, a VARIANCE PERMIT for a 0-foot side yard setback (where a 3-foot side yard setback is the minimum required for an accessory structure) and a 1-foot rear yard setback (where a 3-foot rear yard setback is the minimum required for an accessory structure) to allow the replacement of a failing retaining wall/fence combination of up to 11 feet tall, a TREE PERMIT to allow for work within the dripline of a 28" Diameter Valley Oak Tree located east of the subject property and a SMALL LOT DESIGN REVIEW for the construction of the retaining wall/fence combination structure at the rear of the parcel in the Alamo area of Contra Costa County, is APPROVED subject to the attached conditions of approval.

Ruben L. Hernandez  
County Zoning Administrator

By:   
Jennifer R. Cruz  
Deputy Zoning Administrator

Unless otherwise provided, THIS PERMIT WILL EXPIRE ONE (1) YEAR from the effective date if the action allowed by this permit is not undertaken within that time.

PLEASE NOTE THE EFFECTIVE DATE, as no further notification will be sent by this office.

**FINDINGS AND CONDITIONS OF APPROVAL FOR COUNTY FILE #CDVR23-01062;  
TOM DUDLEY (APPLICANT) & HUGH STEPHEN MCDONALD (OWNER):**

**I. Variance Findings**

- 1. Required Finding: That any variance authorized shall not constitute a grant of special privilege inconsistent with the limitations on other properties in the vicinity and the respective land use district in which the subject property is located.*

Project Finding: The subject parcel is Parcel C under Minor Subdivision 93-86 which was recorded on February 26, 1988. Included in this Minor Subdivision approval was a condition of approval that required development rights at the rear of the property to be granted to the County for the maintenance of the drainage within the West Branch Green Valley Creek. In January of 2023, a landslide took place along the creek bank of the neighboring property and damaged the existing retaining wall/fence structure. The previous wall/fence spanned the entire rear yard property line. The project is to construct a replacement retaining wall/fence structure to isolate the rear yard from the landslide on the neighbor's property and to prevent a landslide on the subject property.

The granting of a variance to allow for the replacement of a failing retaining wall/fence combination of up to 11 feet tall located at a 0-foot side yard setback (where 3-foot side yard setback is the minimum required for an accessory structure) and a 1-foot rear setback (where a 3-foot rear yard setback is the minimum required for an accessory structure) will not constitute a grant of special privilege that is inconsistent with the limitations on other properties in the vicinity due to the existing conditions, site topography, and parcel location. Properties to the east are on a lower elevation. Because of this drainage easement and creek at the rear of parcels along Green Valley Road, development of the property required a large retaining wall/fence structure at the rear to prevent landslides including erosion and collapse of the rear yard from occurring. A retaining wall is a reasonable remedy to an existing sloped situation beyond the control of the property owner. Furthermore, the fence on top provides a safety measure to prevent accidents in the creek. Many properties along Green Valley Road utilize retaining walls in the rear because of the proximity to the creek which runs the entire length of the rear property line. Therefore, approval of the variance would not be a grant of special privilege inconsistent on the limitations on other properties in the vicinity and the R-20 Single-Family Residential District in which the subject property is located.

2. ***Required Finding: That because of special circumstances applicable to the subject property because of its size, shape, topography, location or surroundings, the strict application of the respective zoning regulations is found to deprive the subject property of the rights enjoyed by other properties in the vicinity and within the identical land use district.***

Project Finding: The subject parcel and parcels along Green Valley Road are all directly adjacent to the West Branch Green Valley Creek, which is a drainage easement. County maps show that the area directly behind the rear property line drops steeply at a slope greater than 26%. The property starts at 505 feet above mean sea level and drops to 490 feet above mean sea level to the creek at the rear. This topography behind the property proves to be a special circumstance. Due to the steep drop in slope, a retaining wall to hold up the rear yard is necessary to prevent erosion and collapse of the parcel. The new retaining wall/fence combination structure will replace the previous wall and associated fence with a pier support system for appropriate support and stability. The new retaining wall will also structurally support the hillside and increase safety for the property owner and adjacent neighbors. Placing the retaining wall elsewhere on the subject property, outside of the rear yard would not accomplish this goal and would constitute a loss of usable land for the property owner. Strict application of the zoning regulations would prevent the property owner from installing a retaining wall that is needed to prevent a landslide. Without the retaining wall, the property owner would not be able to have a rear yard on the parcel which is a right enjoyed by other properties in the area. Without the retaining wall, the rear yard area would surely suffer a structural failure. Therefore, because of special circumstances applicable to the property that include steep sloping topography, a drainage easement and a creek located at the rear, this property is subject to special circumstances which necessitate the need for a variance to allow a retaining wall to be built with reduced setbacks.

3. ***Required Finding: That any variance authorized shall substantially meet the intent and purpose of the respective land use district in which the property is located.***

Project Finding: The intent and purpose of a Single-Family Residential (R-20) zoning district is to facilitate orderly development and maintenance of low-density single-family residential neighborhoods. This includes allowing residential dwelling improvements, additions and accessory structures compatible with the surrounding neighborhood. The location and height of the retaining wall with a fence on top do not hinder the intent and purpose of the respective land use district. The retaining wall with fence on top will instead support the steep hillside

that is behind the subject property, thereby increasing safety for the property owners. Moreover, retaining walls are common accessory structures in areas of the County that are sloped. Thus, the variance for this retaining wall meets the intent and purpose of the R-20 District.

## **II. Tree Permit Findings**

**1. Required Finding: *The Zoning Administrator is satisfied that the following factors as provided by County Code Section 816-6.8010 for granting a tree permit have been satisfied as follows:***

- A. Reasonable development of the property would require the alteration or removal of the tree and this development could not be reasonable accommodated on another area of the lot;
- B. Where the arborist or forester report has been required, and the director is satisfied that the issuance of a permit will not negatively affect the sustainability of the resource.

Finding: The tree is located in the creek behind the house. The project will include digging down for piers to support the existing soils to prevent future landslides. Reasonable development of the property would require the alteration of the tree because the tree is located in the existing landslide area. Therefore, development could not be reasonably accommodated on another area of the lot. The applicant provided an arborist report prepared by Joe Mattos, L.S.A Certified Arborist WE-8042A, that evaluated the landslide repair work in relation to the health condition of the existing Valley Oak Tree. The arborist report indicated that the excavation area will enter the dripline of the canopy by a few feet. The arborist states in the report "I do not anticipate any negative affect on the trees health or stability." Thus, the arborist report indicates that the permit will not negatively affect the sustainability of the resource.

- C. Required Factors for Denying a Tree Permit. The Zoning Administrator is satisfied that none of the factors as provided by County Code Section 816-6.8010 for denying (or modifying) a tree permit application apply to the subject property.

### **III. Small Lot Design Review Findings**

#### **1. Location:**

Project Finding: The project is to allow a replacement of a failing retaining wall/fence combination of up to 11 feet tall located at a 0-foot side yard setback (where a 3-foot side yard is the minimum required for an accessory structure) and a 1-foot rear yard setback (where a 3-foot rear setback is the minimum required for an accessory structure). The retaining wall/fence combination structure will be placed along the rear property line because that is where the landslide repair work will take place. The property starts at 505 feet above mean sea level and drops to 490 feet above mean sea level to the creek at the rear. Due to the increase downslope, the location of the retaining wall needs to be placed in the rear yard to prevent erosion and the collapse of the parcel. This location is consistent with surrounding parcels because many neighboring parcels also border the creek and have retaining wall structures in their rear yard to prevent landslides. Moreover, fences located on or near property lines is common in the neighborhood for privacy and safety. Therefore, the location of the retaining wall/fence structure is consistent with other similar structures in the immediate vicinity.

#### **2. Size:**

Project Finding: The project will replace a failing retaining wall/fence combination with a new one to structurally support the hillside for increased safety for the property owner and adjacent neighbors. The retaining wall size was designed by a registered professional engineer who evaluated the damage of the landslide and how large a retaining wall is needed to remedy the situation. Moreover, the retaining wall is designed to not be higher than the native grade of the parcel so it will not create a bulky appearance. Therefore, the size of the retaining wall is appropriate for the scope of work.

#### **3. Height:**

Project Finding: Retaining walls and fences are considered accessory structures as they are ancillary to the uses of a single-family residence. The project is for the replacement of a failing retaining wall/fence combination structure of up to 11 feet tall. Overall, the project will remain consistent with the existing wall/fence combination as it is a replacement of the failed structure.

#### **4. Design:**

Project Finding: The retaining wall will utilize tiebacks to anchor the wall into the earth and will be placed on concrete piers. The design of the retaining wall is very similar to other retaining walls placed on steep sloping topography in the immediate vicinity. The design for this retaining wall allows the structure to be stable in the ground and prevent further landslides. The fence on top of the wall will be 5 feet tall and will be wood. This design is very similar to the existing wood fence and other wood fences in the immediate neighborhood. Therefore, the design of the retaining wall/fence combination structure is consistent with the neighborhood.

### **CONDITIONS OF APPROVAL FOR COUNTY FILE #CDVR23-01062:**

#### **Project Approval**

1. A Variance Permit to allow for the reconstruction of a failing retaining wall/fence combination of up to 11 feet tall located at a 0-foot side yard setback (where a 3-foot side accessory structure setback is the minimum required) and a 1-foot rear setback (where a 3-foot rear accessory structure setback is the minimum required), a Tree Permit to allow for work within the dripline of a 28" Diameter Valley Oak and a Small Lot Design Review for the construction of the retaining wall/fence combination structure, is APPROVED, as generally shown and based on the following documents:
  - Application materials submitted to the Department of Conservation and Development, Community Development Division (CDD) on September 28, 2023.
  - Revised application materials and plans submitted to the Department of Conservation and Development, Community Development Division (CDD) on January 18, 2024.
  - Arborist Report prepared by Quality Tree Care – Joe Mattos, I.S.A. Certified Arborist WE-8042A submitted to the Department of Conservation and Development, Community Development Division (CDD) on January 18, 2024.

#### **General Provisions**

2. Any deviation from the approved plans shall require review and approval by the CDD and may require the filing of an application for a new Variance permit.

### **Grant Deed of Development Rights**

3. **Prior to CDD -stamp of approval for the issuance of a grading or building permit, whichever occurs first**, the applicant shall obtain authorization from the Contra Costa County Board of Supervisors to allow installation of the proposed retaining wall/fence structure on the subject property, where development rights have been grant deeded to the County pursuant to CDMS86-0093. Approval granted by the Zoning Administrator is contingent upon this approval of the Board of Supervisors, which must be obtained prior to the execution of this CDVR23-01062 Variance Permit.

### **Payment of Fees**

4. The application was subject to an initial deposit of \$3,250.00. The application is subject to time and material costs if the application review expenses exceed the initial deposit. Any additional fee due must be paid prior to an application for a grading or building permit, or 60 days of the effective date of this permit, whichever occurs first. The fees include costs through permit issuance and final file preparation. Pursuant to Contra Costa County Board of Supervisors Resolution Number 2019/553, where a fee payment is over 60 days past due, the Department of Conservation and Development may seek a court judgement against the applicant and will charge interest at a rate of ten percent (10%) from the date of judgement. The applicant may obtain current costs by contacting the project planner. A bill will be mailed to the applicant shortly after permit issuance in the event that additional fees are due.

### **Contingency Restitution Should Altered Trees Be Damaged**

5. **Prior to CDD-stamp of approval for the issuance of a grading or building permit, whichever occurs first**, the applicant shall provide the County with a security (e.g., cash deposit or bond) to allow for replacement trees to be preserved that are significantly damaged or destroyed by construction activity, pursuant to the requirements of Section 816-6.1204 of the Tree Protection and Preservation Ordinance.

The Security shall be based on:

- A. Extent of Possible Restitution Improvements – The planting of up to two (2) trees, minimum 15-gallons in size, in the vicinity of the affected tree(s), or an equivalent planting contribution as determined appropriate by the CDD, subject to prior review and approval of the CDD.
- B. Determination of Security Amount – An estimate for the security shall be submitted for CDD review which accounts of the following costs:

- i. Preparation of a tree planting and irrigation plan by a licensed landscape architect, arborist, or landscape contractor for up to two (2) trees as described in Section A above. The plan shall comply with the County's Water Efficient Landscapes Ordinance and verification of such shall accompany the plan. If deemed necessary by the CDD, the plan shall be implemented prior to final building inspection.
    - ii. The labor and materials for planting the potential number of trees and related irrigation improvements (accounting for supply, delivery, and installation of tree and irrigation) shown on the approved planting and irrigation plan.
    - iii. An additional 20% above the costs described in Sections 5B.i and 5B.ii.
  - C. Initial Deposit for Processing of Security – The County ordinance requires that the applicant pay fees to cover all staff time and material costs for processing the required security. At the time of submittal of the security, the applicant shall pay an initial deposit of \$200.00.
  - D. Duration of Security – The security shall be retained by the County for a minimum of 12 months and up to 24 months beyond the completion of the tree altering improvements (i.e., date of final inspection). As a prerequisite of releasing the security, between 12 and 24 months after final inspection, the applicant shall arrange for the consulting arborist to inspect the trees and to prepare and submit to the CDD for review an assessment of the trees' health. The report shall include any additional measures necessary for preserving the health of the trees and the measures shall be implemented by the applicant. In the event that the CDD determines that any trees intended for preservation have been damaged by development activity, and that the applicant has not been diligent in providing reasonable restitution, then the CDD may require that all or part of the security be used to provide for mitigation of the damaged tree(s), including replacement of any trees that have died.
6. The expenses associated with all required arborist services shall be borne by the developer and or/property owner.

### **Construction Period Restrictions and Requirements**



All construction activity shall comply with the following conditions and shall be included on the construction drawings.

7. Prior to the start of construction or any clearing, stockpiling, trenching, grading, compaction, paving or change in ground elevation on site with the tree to be preserved, the Applicant shall install protective fencing at or beyond the driplines of the tree to be preserved and along the boundaries of all other protected trees within the vicinity of construction. The fencing shall remain in place for the duration of construction activities. Construction plans shall stipulate on their face where temporary fencing is to be placed. The required fencing shall be installed prior to the commencement of any construction activity.
8. The applicant shall make a good faith effort to minimize project-related disruptions to adjacent properties, and to uses on the site. This shall be communicated to all project-related contractors.
9. The applicant shall require their contractors and subcontractors to fit all internal combustion engines with mufflers which are in good condition and shall locate stationary noise-generating equipment such as air compressors as far away from existing residences as possible.
10. Construction equipment and materials shall be stored onsite.
11. The site shall be maintained in an orderly fashion. Following the cessation of construction activity, all construction debris shall be removed from the site.
12. Large trucks and heavy equipment shall be subject to the same restrictions that are imposed on construction activities, except that the hours are limited to 9:00 AM to 4:00 PM.
13. A good faith effort shall be made to avoid interference with existing neighborhood traffic flows.
14. Unless specifically approved otherwise via prior authorization from the Zoning Administrator, all construction activities shall be limited to the hours of 8:00 A.M. to 5:00 P.M., Monday through Friday, and are prohibited on State and Federal holidays on the calendar dates that these holidays are observed by the State or Federal government as listed below:

New Year's Day (State and Federal)

Birthday of Martin Luther King, Jr. (State and Federal)

Washington's Birthday (Federal)

Lincoln's Birthday (State)

President's Day (State)  
Cesar Chavez Day (State)  
Memorial Day (State and Federal)  
Juneteenth National Independence Holiday (Federal)  
Independence Day (State and Federal)  
Labor Day (State and Federal)  
Columbus Day (Federal)  
Veterans Day (State and Federal)  
Thanksgiving Day (State and Federal)  
Day after Thanksgiving (State)  
Christmas Day (State and Federal)

For specific details on the actual day the State and Federal holidays occur, please visit the following websites:

Federal Holidays: [Federal Holidays \(opm.gov\)](https://www.opm.gov/policy-data-oversight/holidays-leave/federal-holidays/)

California Holidays: <http://www.ftb.ca.gov/aboutftb/holidays.shtml>

## **PUBLIC WORKS**

### **CONDITIONS OF APPROVAL FOR PERMIT CDVR23-01062**

#### **COMPLY WITH THE FOLLOWING CONDITIONS OF APPROVAL PRIOR TO ISSUANCE OF A BUILDING PERMIT.**

##### **General Requirements**

15. Improvement plans prepared by a registered civil engineer shall be submitted, if necessary, to the Public Works Department, Engineering Services Division, along with review and inspection fees, and security for all improvements required by the Ordinance Code for the conditions of approval for this variance permit. Any necessary traffic signing and striping shall be included in the improvement plans for review by the Transportation Engineering Division of the Public Works Department.

##### **Access to Adjoining Property:**

###### **Proof of Access**

16. The Applicant shall furnish proof to the Public Works Department of the acquisition of all necessary rights of way, rights of entry, permits and or/easements for the

construction of off-site, temporary or permanent, public and private road and drainage improvements.

**Drainage Improvements:**

Collect and Convey

17. The Applicant shall collect and convey all stormwater entering and/or originating on this property, without diversion and within an adequate storm drainage system, to an adequate natural watercourse having definable bed and banks, or to an existing adequate public storm drainage system which conveys the stormwater to an adequate natural watercourse, in accordance with Division 914 of the Ordinance Code.

**Miscellaneous Drainage Requirements:**

18. The Applicant shall design and construct all storm drainage facilities in compliance with the Ordinance Code and Public Works Department design standards.
19. The Applicant shall prevent storm drainage from draining across the sidewalk(s) and driveway(s) in a concentrated manner.

**Creek Banks and Creek Structure Setbacks:**

20. The Applicant shall show the creek structure setback line on the site plan in accordance with Section 914-14.012, "Structures Setback Lines for Unimproved Earth Channels" and observe this setback line as if this were a subdivision.

### **ADVISORY NOTES**

**ADVISORY NOTES ARE NOT CONDITIONS OF APPROVAL; THEY ARE PROVIDED TO ALERT THE APPLICANT TO ADDITIONAL ORDINANCES, STATUTES, AND LEGAL REQUIREMENTS OF THE COUNTY AND OTHER PUBLIC AGENCIES THAT MAY BE APPLICABLE TO THIS PROJECT.**

- A. NOTICE OF OPPORTUNITY TO PROTEST FEES, ASSESSMENTS, DEDICATIONS, RESERVATIONS OR OTHER EXACTIONS PERTAINING TO THE APPROVAL OF THIS PERMIT.

Pursuant to California Government Code Section 66000, et seq., the applicant has the opportunity to protest fees, dedications, reservations or exactions required as part of this project approval. To be valid, a protest must be in writing pursuant to Government Code Section 66020 and must be delivered to the Community Development Division within a 90-day period that begins on the date that this project is approved. If the 90th day falls on a day that the Community Development Division is closed, then the protest must be submitted by the end of the next business day.

- B. Prior to applying for a building permit, the applicant is strongly encouraged to contact the following agencies to determine if additional requirements and/or additional permits are required as part of the proposed project:

- Contra Costa County Building Inspection Division
- Contra Costa County Environmental Health Division
- Contra Costa County Public Works Department
- East Bay Municipal Utilities District
- San Ramon Valley Fire Protection District
- Central Contra Costa Sanitary District

- C. The applicant will be subject to the requirements of the Bridge/Thoroughfare Fee Ordinance for the Alamo, Southern Contra Costa (SCC) Regional, and Tri-Valley Transportation Areas of Benefit, as adopted by the Board of Supervisors. Any fees, if required, shall be paid prior to issuance of building permits.