

# CITY OF NOVATO ZONING HOUSING AND BUILDING CODES APPEALS BOARD

**June 27, 2023**

## **Appeal of Citation(s)**

**Item #1** 364 Sunset Parkway, APN 152-132-09



**Issue:** Appeal of citation: Demolition of Pool and construction of cement wall. Wall does not meet Zoning code.

Property of Lin, Manling  
Case CEP21-0010 and CEC22-0350

**History:** On February 8, 2021, Code Enforcement discovered a swimming pool was in the process of being demolished and a concrete block wall had been constructed along the side yard (Lynwood Dr.) without an approved/issued permit. Case CEP21-0010 created.

On February 9, 2021, Administrative Order mailed to the listed owner. First class and certified

On February 17, 2021, **STOP WORK** order posted.

On February 22, 2021, staff spoke with a person on the phone who identified himself as Bill Heriot. Mr. Heriot was inquiring about the process of a permit for the pool demo and fence. Permit application process and procedure was conveyed. Mr. Heriot was advised to contact Code Enforcement for deadline information.

On February 22 and 23, 2021, Supervising Code Enforcement Beretta (SCEO) traded voice messages with Mr. Heriot. In one of his messages, Mr. Heriot stated Code Enforcement Officer Nichelini was unable to answer questions from a phone conversation they had.

On April 5, 2021, SCEO Beretta and Mr. Heriot traded voice messages again. SCEO is aware Mr. Heriot did speak with a building inspector who told him to contact SCEO.

On June 24, 2021, staff drove by property to see that temporary fencing was in place at possible gate location.

On December 15, 2022, staff received a complaint regarding an opening in the concrete wall, leaving access to the pool unhindered. Case CEC22-0350 created.

On December 15, 2022, staff inspected the property finding that temporary orange fencing was in place at opening in concrete wall to the rear.

On December 16, 2022, Administrative Order mailed to the listed owner. First class and certified. Staff also left a voice message for the complainant with an update.

On December 20, 2022, SCEO had a phone conversation with Mr. Heriot regarding the order. Mr. Heriot stated he does not believe he cannot rectify the issue to meet zoning code. SCEO gave him options of how to comply; that the outstanding plan check fee from permit application B2021-0515 is due and payable; Mr. Heriot was given permission to install a permit gate at the opening due to the potential hazard due to access to pool area. At the very least, secure the temporary fencing until all issues resolved.

On January 19, 2023, certified Administrative Order returned unsigned from December 16, 2022. (First class not returned.)

On January 19, 2023, SCEO emailed attorney Samuel Ray of Colla & Ray LLP, clarifying the need for a permit and zoning codes.

On January 26, 2023, staff performed an inspection finding issue not resolved.

On January 26, 2023, SCEO emailed attorney Samuel Ray of Colla & Ray LLP, further clarifying the need for a permit and zoning codes.

On January 26-27, 2023, due to two phone calls, SCEO emailed complainant. Update on what was seen and our status.

On January 27, 2023, SCEO emailed Mr. Heriot regarding the opening, unpaid plan check fees, and noting the property is also in violation of 19.31.020 General Maintenance Requirements and 19.31.030, Specific Violations due to the condition of the pool.

On February 9, 2023, staff performed an inspection finding issue not resolved.

On February 13, 2023, Administrative Order mailed to the listed owner. First class and certified and emailed to Mr. Heriot. Updated compliance date and conveying staff will allow the wall to stay at current location provided permit obtained and 50' sight visibility is met for corner.

On March 15, 2023, certified Administrative Order returned unsigned from February 13, 2023. (First class not returned.)

On April 5, 2023, Administrative Citation mailed to the owner. First class and certified. Citation for the amount of \$1,200.00

On April 6, 2023, staff performed an inspection finding issue not fully resolved but did note a gate appears to have been installed.

On April 17, 2023, appeal of citation received, but did not include the appeal fee. Staff followed up the next day (4/18/23) with a letter being mailed first class and certified noting amount required and request of specific reason of appeal.

On April 20, 2023, SCEO responded to an email from Mr. Ray clarifying/answering inquiry regarding appeal fee due. Once appeal fee received staff would begin process of appeal board.

On May 8, 2023, staff received the appeal fee of \$120.00.

On May 10, 2023, Mr. Ray was emailed that appeal fee received and that they would be notified at least 10 days prior of appeal date, time, and location.

On May 10, 2023, certified Administrative Citation returned unsigned. (First class not returned.)

On May 11, 2023, email to Mr. Ray that notification of hearing would be made in compliance with code, Chapter 1-7.8(b)

On May 24, 2023, SCEO replied to email inquiry from Mr. Ray with answer if notice regarding hearing date had been sent.

On May 25, 2023, SCEO clarified in an email to Mr. Ray of when the hearing may take place.

On May 29, 2023, certified appeal response returned unsigned. (First class not returned.)

On June 15, 2023, staff posted the property with the date of the hearing within an envelope and mailed via certified mail to the property owner.

**Current:** No changes since appeal received

**Violation:** **105.1 California Building Code;** 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.

- 1) Construction of concrete masonry wall/ swimming pool barrier along Lynwood Dr. property line. Does not meet Zoning code 19.20.070 Height Limits and Exceptions*
- 2) Swimming Pool Demolition*

**Board Action:** The Board may:

1. Uphold the administrative citation, finding that a violation of the California Building Code(s) did and still has occurred/does exist and/or that the appellant is the responsible person, OR
2. Deny the administrative citation, finding that there was not a violation of the City of Novato Municipal Code and/or that the appellant is the responsible person, OR

3. Uphold or deny a portion(s) of the administrative citation, finding that there was not OR was a violation of the City of Novato Municipal Code and/or that the appellant is the responsible person.
4. Board may continue the hearing and request additional information from the enforcement officer or the recipient of the administrative citation prior to issuing a written decision.

**Staff Recommendation:**

- (1) Uphold the Administrative Citation. Full amount of fine to be retained.