



Shelby S <sheehan.shelby@gmail.com>

Opposition to Pyka lease consent item on City Council Agenda 09/19/20231 message

Shelby S <sheehan.shelby@gmail.com>

Mon, Sep 18, 2023 at 8:15 PM

To: Marilyn Ezzy Ashcraft <mezzyashcraft@alamedaca.gov>, Malia Vella <mvella@alamedaca.gov>, Trish Spencer <tspencer@alamedaca.gov>, Tony Daysog <tdaysog@alamedaca.gov>, tjensen@alamedaca.gov, City Attorney <cityattorney@alamedacityattorney.org>

Cc: Seth.Blackmon@slc.ca.gov, Nicole.Dobroski@slc.ca.gov, Sheri.Pemberton@slc.ca.gov

Council-

The Pyka lease needs to be taken off the consent calendar and revised because the City does not have the authority to license the entire parcel to a private party, nor does the City have the authority to allow any of the parcel to be fenced off from the public.

The proposed Pyka lease: (1) erroneously grants tenant rights for exclusive possession of the whole 4-acre parcel rather than use of the 106,000 SF limited by the leased Rentable Space; and (2) the lease provision for exterior fencing is prohibited by the Tidelands Public Trust encumbrances, the Town Center and Waterfront Specific Plan, NAS Historic Preservation of the character-defining viewsapes, and other numerous local, state, and federal land use regulations.

I am in support of Pyka's use of Building 39, but I am extremely concerned about the City's lease provisions to allow a private party to take over the whole parcel and obstruct the public's access to the protected Historic public view corridors along West Tower Ave to Seaplane Lagoon.

I am even more concerned that longtime Planning Director Andrew Thomas was allowed to present these illegal lease provisions without challenge--and I continue to wonder when the City Attorneys will fact-check him instead of allowing him to present false information in the public domain.

City Councilmembers should remove the item from the consent calendar and revise the lease to conform with all applicable land use laws.

PUBLIC TRUST VIEWSCAPES

The Public Trust Doctrine declares:

"Uses that do not protect or promote Public Trust values, are not water-dependent or oriented and exclude rather than facilitate public access and use are not consistent with the

trust under which the lands are held"

As long-time Planning Director Thomas and the City Attorneys are already aware--*and as shown by Mr Thomas himself* in his presentation to Council---Building 39 is subject to the Tidelands Trust area within the Historic NAS Central Corridor.

What long-time Planning Director Thomas failed to mention, *though he clearly knows*, is that the viewsapes along Hangar Row to Seaplane Lagoon are protected as part of the Public Trust (as well as other local state and federal land use regulations), ***"...for the benefit, use and enjoyment of the public"***.

Just as important, longtime Planning Director Thomas also failed to mention that all the Hangars are major contributing features of the Historic District, and the viewsapes along West Tower to Seaplane Lagoon are protected character-defining public Historic Resources per State and local Historic Preservation regulations. Based on these regulations, potential "viewscape-altering" uses are required to obtain a Certificate of Approval from the Historical Advisory Board.

The valuable waterfront public vistas were described in Mikesell 1997:

"...The most dramatic vistas of the Historic District are found in the Hangars Area along either side of the hangars and from the hangars to the harbor area..."

"The buildings help define these axes, framing all views along the edges of these buildings and from the buildings to the Bay..."

The open, flat "...area in front of the grand row of seaplane hangars creates an impressive view corridor which must be considered for improved public access and utilization of the waterfront on this important edge."

Longtime Planning Director Thomas also failed to mention that maintaining public scenic vistas is a key open space goal of the Town Center and Waterfront Specific Plan. As variously described throughout the Plan, all use and development shall:

"...maximize waterfront access and views, and

"...maintain view corridors to the Seaplane Lagoon, as well as a continuous view parallel to its northern edge, and

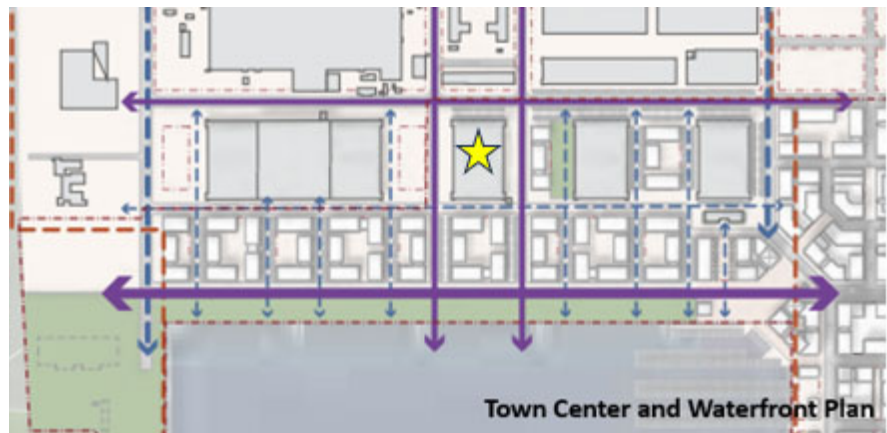
"...preserve scenic views and cultural landscapes, and

"...preserve the historic sense of place by preserving the historic pattern of streets and open spaces in the area, and

"...create unparalleled shoreline park and open space opportunities, and

"...structure open space to underscore the prominence of the Seaplane Lagoon"

As shown below, the protected Historic character-defining and other important views along West Tower exist between ***every one of the Historic District Hangars***. Therefore, none of the Hangars should have exterior fences that illegally block the Historic views.



As such, and as Council already knows about this and all other items: City Council has a statutory duty to uphold ALL local laws (even on their own properties); and Council has a specific duty to protect the NAS Historic open space public resources.

Existing Illegal View-obstructing Fences

Unfortunately, despite all the protective regulations that preserve the Seaplane Lagoon views, currently every one of the other Hangars has view-obstructing illegal and/or improperly permitted industrial fences--none of which have Certificates of Approval from the Historical Advisory Board.

The Bladium western-side fencing is the only fence the public can see past. In most cases, 10' tall construction zone type fences extend across the entire parcel, leaving only a narrow view corridor for the public to peek through. ----***Hows that for an "impressive view corridor"?***

As shown below, the current fencing (in red) ***obstructs 70% of the public viewscape***. With the addition of Building 39 fencing, over ***80%*** of the public viewscape would be blocked by illegal and/or improperly-permitted fences.



City Officials should demand removal of existing fencing on Hangar Row instead of abusing their power to circumvent the City's own use-permit restrictions.

Illegal Encroachment on the Tidelands Central Corridor

The Building 39 Hangar is uniquely situated between the Historic vistas at the ends of Saratoga and Lexington streets. These streets provide the only north-south axis public view corridors on the former Navy Base, included in the Tidelands Trust to ensure preservation of these vistas for the public.

The unique location of Building 39 requires the highest level of preservation of the character-defining vistas for enjoyment by the public, and therefore shall not be encroached upon by tall industrial fencing.

As shown below and as described in Mikesell 1997:

"The view corridors along Lexington and Saratoga are some of the most important character-defining elements of NAS Alameda, extending all the way from the north boundary of the base through the Hangars area, looking across Seaplane Lagoon to San Francisco."



Figure 1. Historic View Corridors

PROPOSED ILLEGAL EXCLUSIVE-USE AND POSSESSION RE: EXPANSION OF "RENTABLE SPACE"

Cushman Wakefield's Building 39 advertisement (below) provides public evidence of the legal use restrictions and limits of the Building 39 premises. (It also contains a typo - the parcel size is 4.19 acres, not 9.19 acres). The net parcel size is approximately 4 acres, which equals approximately 175,000 SF (square feet).



CUSHMAN & WAKEFIELD

FOR LEASE

HISTORICAL AL

950 W. Tower Avenue |

Property Highlights

- Unique, High-Functioning Hangar Building
- ±106,000 SF, 9.19 AC (400,149 SF) Parcel
- Existing, Two-Story Office Space
- Large, Grade-Level Hangar Doors (tenant to confirm condition)
- Three (3) Dock-High Position (4th possible)
- Single-Column (Clear Span)
- Heavy Power Service (Alameda Municipal Power)
- **Zoned AP-TC Town Center** (tenant to confirm approved uses)
- **California Tidelands Trust** Encumbrance (tenant to confirm approved uses)
- Great Natural Light
- Built in 1941

Rental Rate: \$0.95/SF/Month NNN



As shown above, the leasable amount of "Rentable Space" of the 4 acre parcel is 106,000 SF, approximately 60% of the entire parcel. As also can be seen above, there are restrictions on property use per the Specific Plan and the California Tidelands Trust.

The 106,000 "Rentable Space" consists of approximately 96,000 SF of the interior "Building" and an additional portion of the approximately 80,000 SF of the exterior "Land" (publicly-shared) common area for "Parking". Therefore, the lease provides permission for the lessee's (un-enforced) rights to use approximately 10,000 SF of the common space for parking. This type of provision is typical in commercial leases which necessarily have publicly-shared outdoor space.

However, as described below, the City has devised an "evil-genius" method to (illegally) grant tenants private use to more than their fair lease-share of the parcel---by illegally allowing tenants to enclose the parcel with tall construction fences!

Comparison of 2017 Delphi v 2023 Pyka Leases RE Irrevocable Exclusive Use

A comparison of the Building's 2017 Delphi lease to the proposed 2023 Pyka lease reveals an alarming change in language to Section 2.2. This language change surreptitiously grants an (untaxed) "**irrevocable**" **license for exclusive use of the entire land area of the 4-acre parcel**.

The words "irrevocable" and "exclusive use" have significant meanings in this context--and I posit very unwise meanings in this context as well. In this context, "irrevocable", means the Tenant can sue the City if any of these provisions are not implemented.

As part of the **irrevocable** lease-right, this section also presumptively commits the City to: (1) illegally bypass the required public review process, and (2) guarantee a *priori* approval of **fencing of the entire parcel**. These provisions disregard all land use regulations, including the Tidelands Trust. The result is a "Back-door" way to illegally expand private-party possessory rights to the entire parcel.

The 2023 Pyka lease provisions amount to an **illegal take** of an additional 75,000 SF private-party exclusive use of the Building 39 land with fencing that obstructs the public's rightful access to the Trustlands and vast viewscapes.

These provisions put the City at risk of lawsuits from both the tenant and the public, and maybe even at risk of enforcement actions from State and Federal agencies.

Notably, other Buildings (11,12, and 41) also have parcel-privatizing construction-type fences that illegally expand the amount of tenants "Rentable Space" on those parcels. Therefore, this language change also appears to be an attempt by the City to effectively "grandfather in" the already-existing and illegal whole-parcel fencing on

those other Hangar parcels---nevermind the fact the City doesn't even have the authority to permit such fencing.

Comparison of 2017 Delphi v 2023 Pyka Exhibits RE Fencing

Both the 2017 Delphi lease and the 2023 proposed Pyka leases are for 106,000 SF of Rentable Space at the Building 39 parcel. Additionally, the 2017 Delphi lease contains appropriate restrictive language (and Exhibits) regarding use of the exterior Land and parking area.

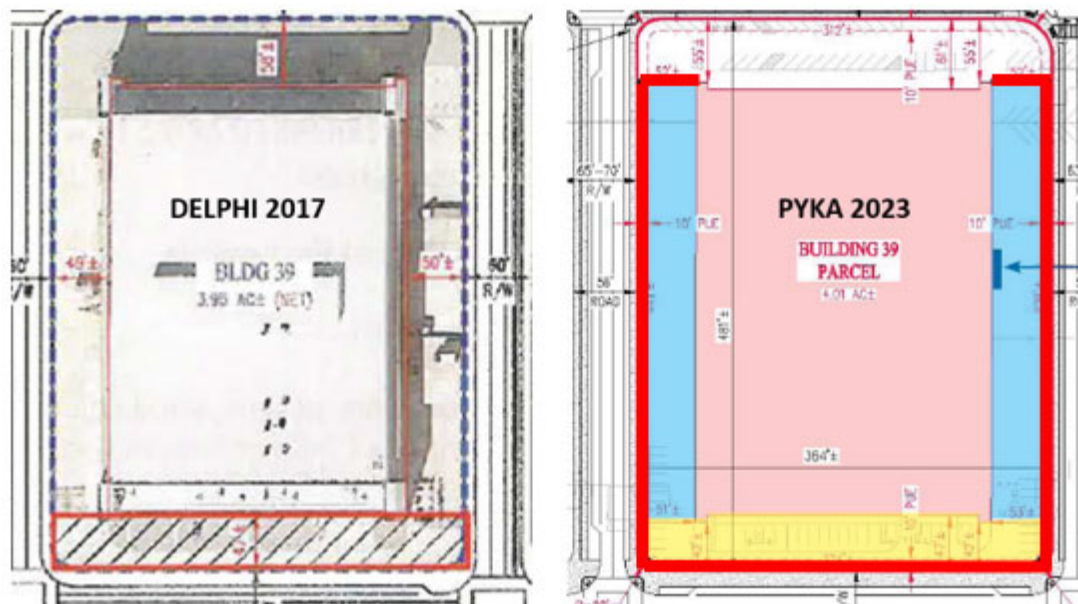
The 2017 Delphi lease also appropriately requires the tenant to request landlord approval for "outside use and storage" that must be ***"properly screened"--which does not equate to carte-blanche approval of prohibitive whole-parcel permanent industrial fencing.***

Given the restrictive land use regulations in the Hangars Area, a more likely "approval" would be ***one that does not require a use permit*** and could include minimal SF for temporary storage for a few days at a time in the rear of the Building, and/or for outdoor activities during business hours.

As can be seen by the side-by-side comparison below, the 2017 Delphi lease Exhibit accurately depicts leasable usage of 106,000 SF of the Building 39 parcel, which includes 10,000 SF of the exterior common area at the rear of the Building (bounded in red with hashmarks).

On the other hand, as can be seen in the 2023 Pyka exhibit, in addition to the 10,000 SF in the rear, the 2023 Pyka lease illegally expands their lease-rights with fencing around all but the front of the entire 175,000 SF of the parcel (bound in red) for their exclusive use.

The blue areas surrounded by fencing (in red) demark the areas that illegally encroach on the Historic public viewscape.



ILLEGAL LEASE PROVISIONS = ILLEGAL PRIVATE TAKEOVER OF ENTIRE BUILDING 39 PARCEL

The City lease provision that grants "irrevocable, exclusive use" of the entire parcel to Pyka is easily implemented via the egregiously illegal promise to irrevocably approve enclosure fencing of nearly the entire parcel.

These two provisions together appear to successfully grant the tenant illegal possession of the entire Land area, excluding the public not only from the parcel itself, but wrongly preventing the public from their rightful ability to enjoy the "impressive" and "dramatic" viewscapes along West Tower to Seaplane Lagoon.

City Officials do not have the authority to permit either provision--these lease provisions are illegal.

It boggles the mind that longtime Planning Director Thomas is championing these provisions given his position and knowledge--and it is also implausible that longtime Planning Director Thomas and the City Attorneys are unaware that the lease language is illegal, and puts the City at risk of several types of lawsuits.

The amount of money potentially generated for City coffers from these leases cannot possibly provide City Officials' personal motivation for intentionally ignoring the applicable land use regulations, and it leaves one to wonder what else might be the real motivation.

It is to Alameda's shame that City Officials are engaging in such conduct.

ENFORCEMENT AUTHORITY

Fences that obstruct public views of the shoreline and privatize public space are prohibited by numerous significant local, state, and federal land use regulations as well as the City's land use policies, but ***policies do no good unless enforced through practice.***

The proposed aforementioned 2023 Pyka lease provisions violate a number of these regulations, thereby putting the City at significant risk of lawsuits.

City Council still has the opportunity to correct the errors in the proposed 2023 Pyka lease, and to rightly prohibit exterior fencing on all the Hangar parcels. The City even has the authority to require removal of the existing fencing--unless the City granted "irrevocable" rights to them, that is. *Yikes*

City Council should remove the item from the consent calendar and revise the lease to be consistent with restrictions and regulations for the Tidelands Trust, Historic District Preservation, the Towne Center and Waterfront Plan, the Federal Base Reuse Agreement, and all the other numerous federal, state, and local land use and zoning regulations.

******I hereby invite the City Attorneys to publicly-fact check me by providing the necessary documentation to support their assertions.******

=====

ADDITIONAL BACKGROUND INFORMATION

Public Stewardship and Historic Preservation

In exchange for gifting the Base to the City at no cost, the City agreed to be good stewards of the public open space, and so adopted numerous Historic preservation and other land use regulations to protect the Navy's character-defining landscape vistas south along:

- Lexington and Saratoga streets from north entry mall to Seaplane Lagoon
- West Tower Ave
- Row of the Hangars Area
- Seaplane Lagoon



Public Impacts

Aside from the open space public benefits in general, the public viewsapes provide a significant benefit to the eateries along West Tower Ave. As more and more ugly tall construction-type fencing encroaches on the public viewscape, there is an increasing potential for significant adverse economic impacts on their businesses because customers are unable to enjoy the views.

Fences that encroach on the Historic Viewsheds are a Public Nuisance

Various elements of the Alameda Municipal Zoning and Historic Preservation Codes recognize that fences that encroach on the Historic viewsheds are public nuisances. Given that the 2023 Pyka lease states the Tenant "shall not commit or suffer to be committed any public or private nuisance", therein lies a conundrum, putting the City on the hook for the nuisance fencing.

For example, if a tenant installs a fence without the proper permits, the tenant would be liable for causing a public nuisance and violations of the Alameda municipal code. The tenant could then face large fines as well as nuisance lawsuits. On the other hand, if City Officials bypass their own regulations and allow this public nuisance, the City would be at risk of numerous lawsuits instead of the tenant.

Therefore, each and every member of the public could sue the City in small claims court for each day the nuisance continues.

EXHIBITS

Building 39-Building 12

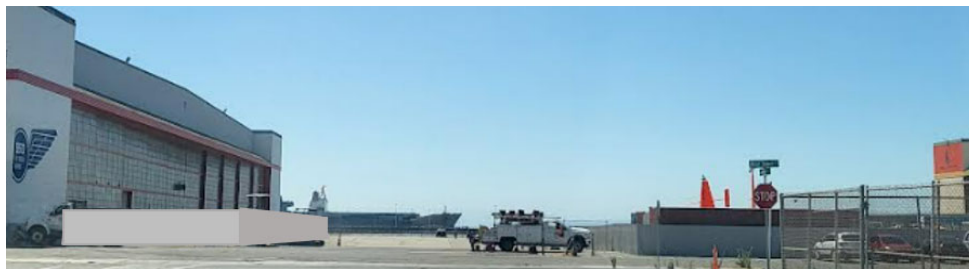
As can be seen in the rendering below (looking north), the recently-installed unpermitted Building 12 fencing **obstructs 65% of the view** along the Saratoga view corridor. If the Building 39 fencing is also illegally installed, **80%** of the public viewshed will be obstructed; at the eastside Lexington viewshed would be illegally reduced by half from the center.



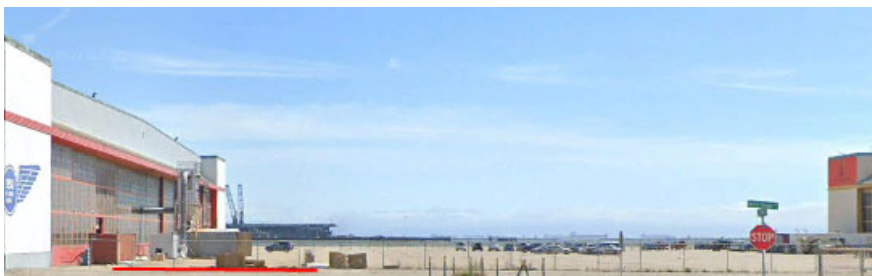
The street level rendering below between Building 39 (left side of pictures) and Building 12 (rightside) shows the amount of public viewscape obstruction between the Buildings.

NOW

v.



THEN



Bladium-Building 39

The existing west-side of Bladium fencing (on the left) and the east-side of Building 39 proposed fencing (on the right) is shown below. This picture shows the still-accessible public viewscape on the East, where fencing does not have view-blocking construction material. That fence is likely compliant with the lease and the land use regulations, and likely would be granted a Certificate of Approval.

EXISTING AND PROPOSED



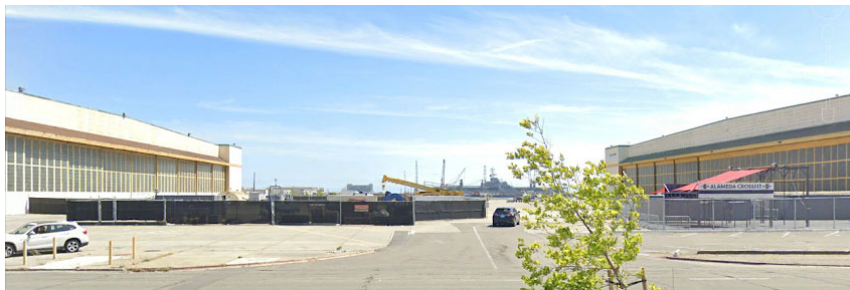
Building 41--Bladium

As seen below, at Building 41 (left), improper fencing nearly completely obstructs the public viewscape along West Tower to Seaplane Lagoon, as there is only about a 10' area in the Firebrand parking lot across from a 30' "unfenced" strip of unobstructed public views.

NOW

V.

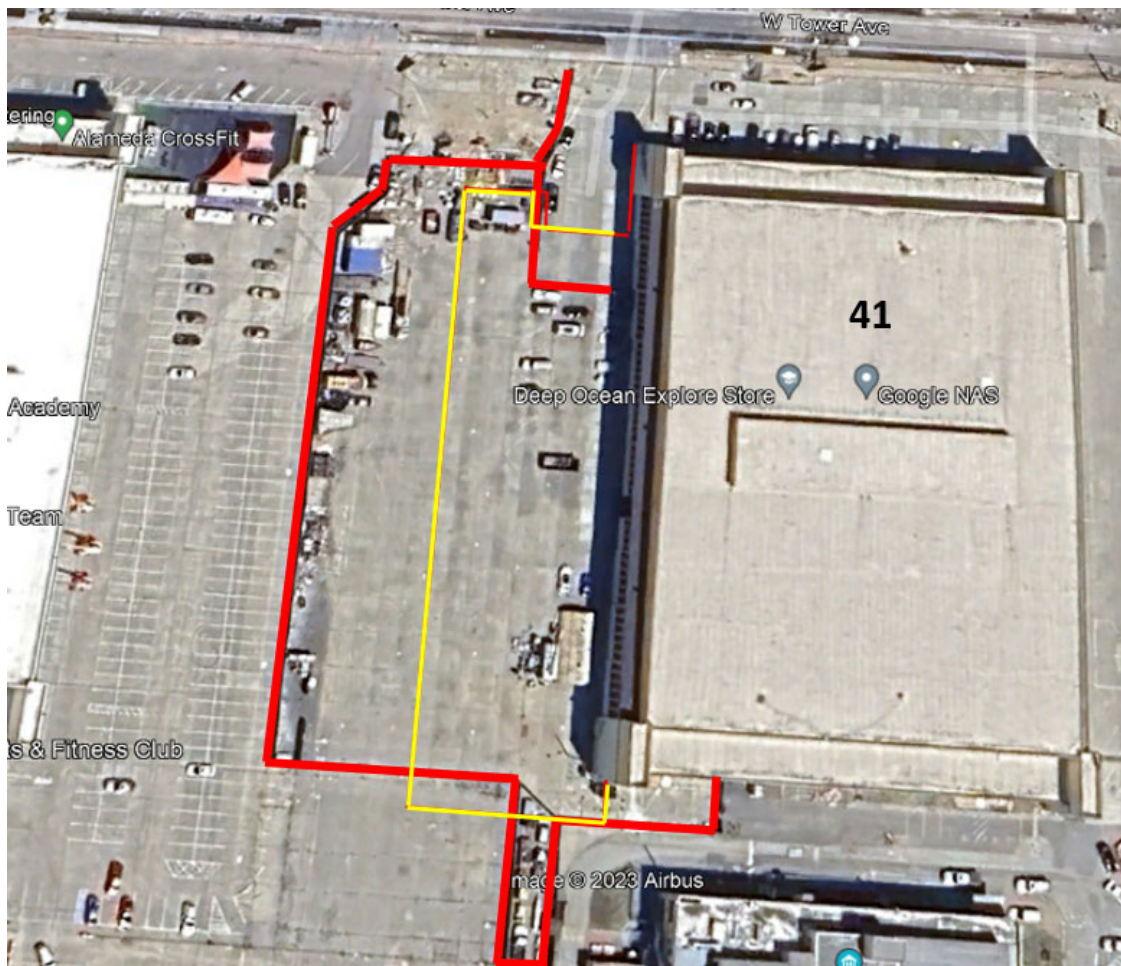
THEN



The aerial rendering of Building 41 (below) shows fencing (in red) that was installed in 2016---a use-permit was not filed until 2021. The 2021 application, submitted by Nanette Mocanu, is suspect for other reasons as well. For example, it erroneously omits

the fact that the Hangar is a contributing Historic Building, and therefore the Historical Advisory Board did not receive it for review.

Additionally, the application appears defective for other reasons, including inadequate rationale for permanent fencing, improper zoning review, no design requirements, unprofessional exhibits, no indication of compliance--and the poorly-drawn exhibit of the fence perimeter actually followed the yellow line, not the red line of the current super-sized fenced area. Nonetheless, the after-the-fact 5-years too-late permit was signed by Allen Tai--who also interestingly is a member of the Historical Advisory Board.



Building 11

At the western corner of Building 11 (shown below) fencing (enhanced for illustrative purposes) obstructs shoreline views all the way down the street--and remember, these photos are taken from a camera 12 feet off the ground.

NOW

v.



THEN



...END for now..