



**Town of Atherton
Planning Department
80 Fair Oaks Lane
Atherton, California 94027
Phone: (650) 752-0544**

DATE: FEBRUARY 28, 2024

TO: PLANNING COMMISSION

FROM: CHRISTABEL SORIA MENDOZA, ASSOCIATE PLANNER

SUBJECT: Request For Variance to permit the installation of a 22-foot-tall kinetic sculpture located in the front/side yard at 390 Stevick Drive (APN 070-031-160).

CEQA: The proposal has been determined to be exempt from the provisions of the California Environmental Quality Act (CEQA) to CEQA Section 15303, New Construction, and CEQA Section 15311, Accessory Structures.

RECOMMENDATION:

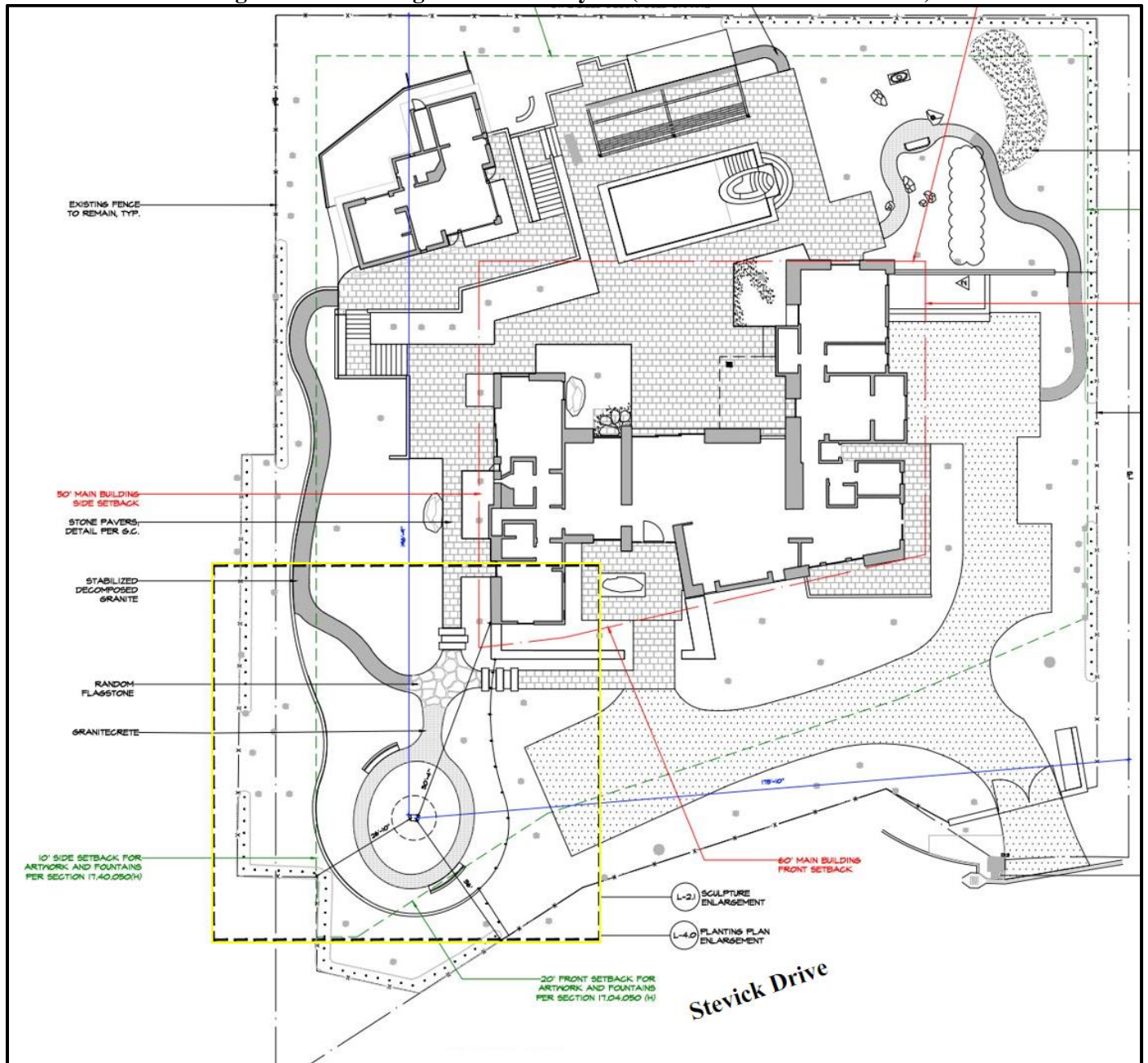
For the reasons outlined in this staff report, the Planning Staff recommends that the Planning Commission **deny** the Variance request.

BACKGROUND:

The subject property at 390 Stevick Drive (APN 070-031-160) is a 1.06-acre (46,173 square-foot) lot located in the R-1A zoning district and south of Alameda de las Pulgas. The lot shape conforms to the R1-A zoning requirements and is generally square, with a width of 210 feet and a lot depth that ranges from approximately 207 feet to 263.5 feet. The front property line varies in length as it follows the curve of Stevick Drive and the adjacent property line of 394 Stevick Drive. The subject property is a hillside lot that slopes upward from Stevick Drive. This topography is consistent with the immediate vicinity, characterized by hillside residential developments where the elevation slopes upwards from Alameda de la Pulgas towards the Santa Cruz Mountains. Neighboring properties are of a similar one-acre size and developed with single family homes, ancillary buildings, structures, and landscaping features. Figure 1 shows the general configuration of the subject property, as illustrated in the submitted plan set (Attachment 1).

The property is developed with an existing main residence, guest house, pool and spa. Some landscaping features such as a dog enclosure fence, boulders, and additional planting of trees and shrubs are proposed with the sculpture under building permit no. BP23-00790. This permit is on-hold pending the outcome of the variance request. The area dashed in yellow in Figure 1 identifies the area of installation for the proposed sculpture.

Figure 1: Lot Configuration and Layout (Sheet L-2.0 of Attachment 1)



PROJECT DESCRIPTION:

The project proposes the installation of a 22-foot-tall kinetic sculpture that is designed to move three to five miles per hour (mph) and will be in constant motion. The sculpture is made of brushed titanium with a stainless-steel base. The Atherton Municipal Code (AMC) 17.40.050 (H)(1), permits artwork, such as sculptures, within the front yard that are set back 20 feet from the front property line, no taller than 11 feet and not more than 120 square feet in total area. Table A provides a summary of required development standards for artwork compared to the attributes of the proposed scope of work.

Table A: Required and Proposed Accessory Structure (Artwork) Setbacks

Standard	Required	Proposed
Front	20 feet	36 feet
Rear	10 feet	197.5 feet
Side	10 feet	26 feet 10 inches
Height	11 foot maximum	<i>14 feet 4.5 inches at lowest, 22 feet 1 inch at tallest</i>
Area	120 square foot maximum	Up to 34.13 square feet

As shown in Table A, the proposed sculpture meets the front, rear, and side setback criteria stated in AMC 17.40.050 (H)(1). However, the project exceeds the allowed 11-foot maximum height in both its lowest and tallest extents. This discrepancy requires a variance for approval. The submitted variance application and request letter, available at Attachments 2 and 3, address the required findings and raise concerns related to the subjectivity of art versus the objectivity of development standards. The application also expresses that there is no suitable alternative location for the sculpture and emphasizes that the artwork would be screened by existing foliage.

When fully extended, the sculpture will be 8 feet and 4.75 inches wide. This width will fluctuate as the blades are in motion and may temporarily exceed the width of 8 feet and 4.75 inches. The sculpture also covers an area of 34.13 square feet when at its maximum lateral extent. At its lowest point, the sculpture will have a height of 14 feet and 4.5 inches. At its tallest point, the sculpture will reach a height of 22 feet and 1 inch, as measured from the natural grade. The peak height will occur momentarily, due to the kinetic nature of the sculpture. Figures 2, 3, and 4 provide additional context for the artwork and are taken from Sheets L-2.1 and L-6.0 of Attachment 1.

Figure 2: Sculpture Garden Elevation

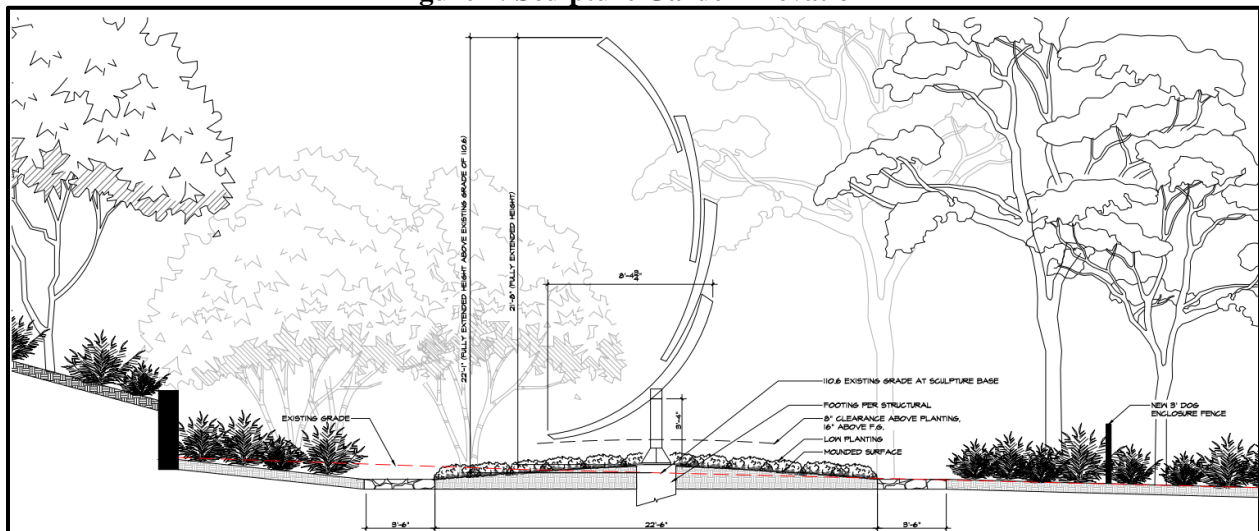


Figure 3: Sculpture Garden Area – Enlarged

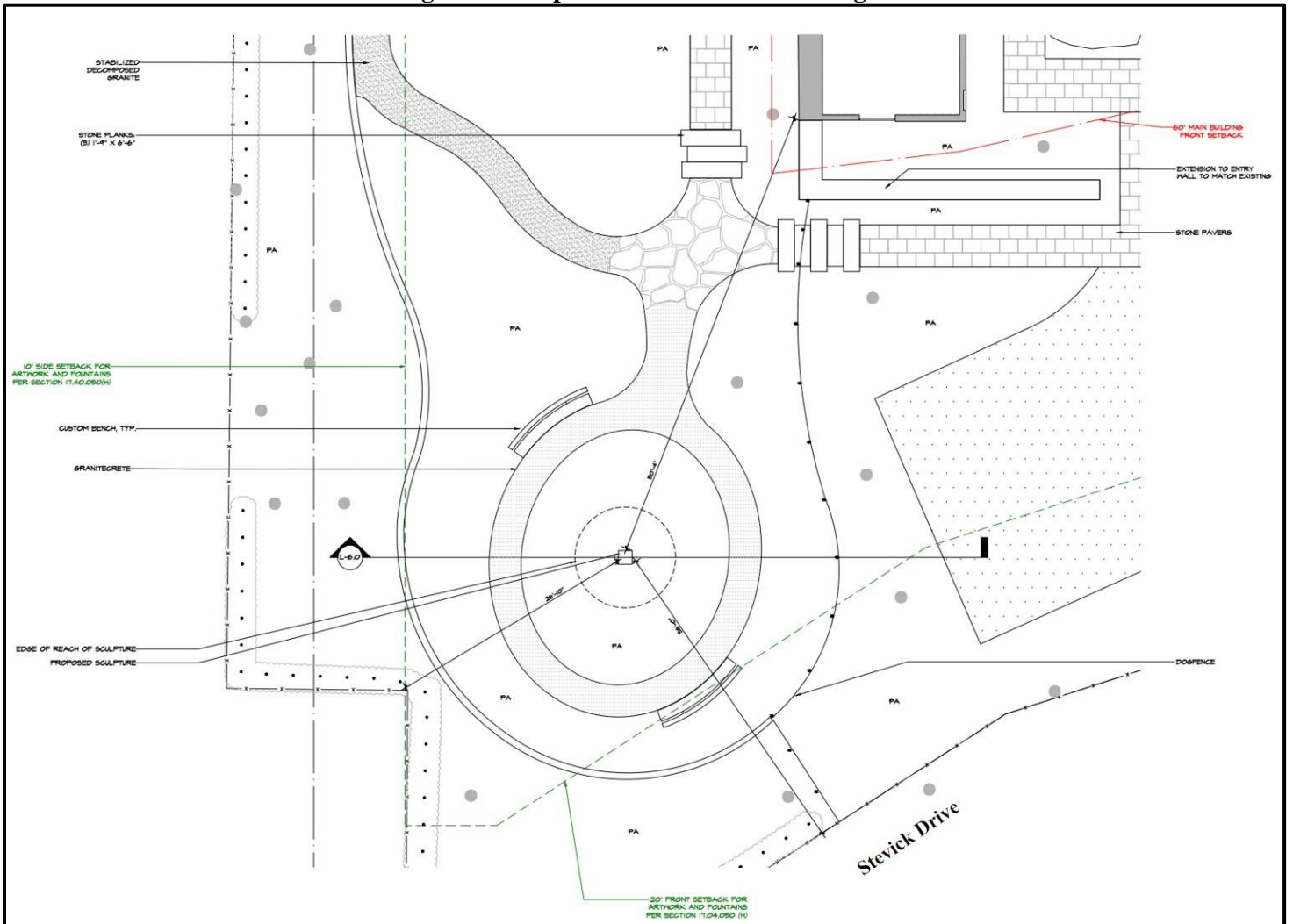
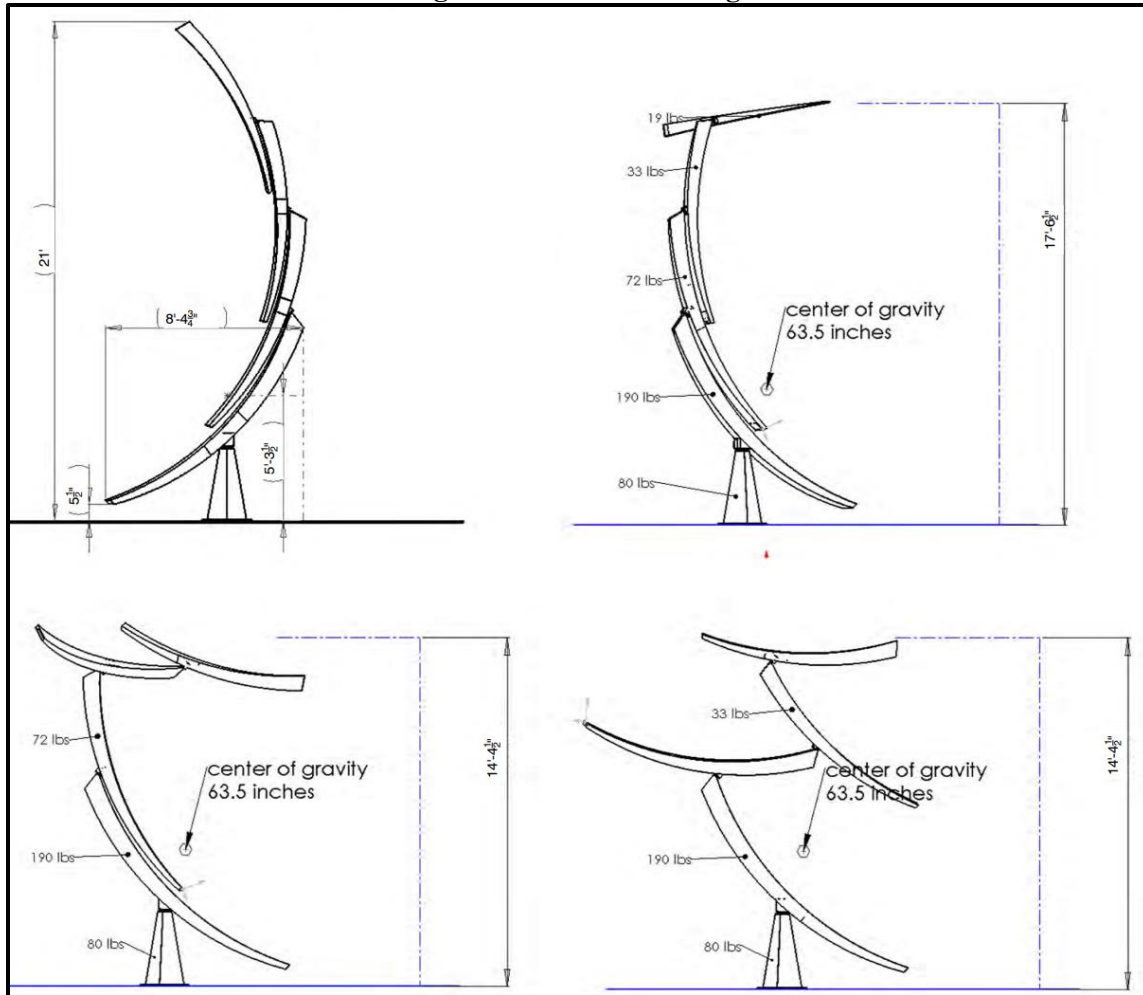


Figure 4: Artist's Drawings



FINDINGS ANALYSIS

To grant a Variance, the Planning Commission must make four findings contained in Atherton Municipal Code Chapter 17.16 and California Government Code Section 65906. The following analysis by staff addresses each finding.

- A. There are special circumstances applicable to the property, including size, shape, topography, location, or surroundings, such that the strict application of this title deprives such property of privileges enjoyed by other property owners in the vicinity and under identical land use zoning district classifications.**

Staff review: Finding not met.

The property at 390 Stevick Drive is 1.06 acres in size and consistent with the standard one-acre lot that characterizes Atherton's R1-A zoned properties. Additionally, the shape of the subject lot is regular, with the exception of the front property line which follows the curvature of Stevick Drive and a neighboring driveway. The slope of the property slopes upward from the Stevick Drive frontage and is characteristic of other lots within the immediate hillside area and south of Alameda de la Pulgas. Further, there are no records

of prior variances granted for buildings or structures in the required front yard that are in excess of the height requirements set by AMC section 17.40.050 (H)(1) or any other height related provisions of AMC 17.40.050. Therefore, there are no special circumstances attributed to the property that deprive the property of privileges enjoyed by other property owners in the vicinity and in the R1-A zoning district.

B. Granting the Variance does not constitute a grant of special privileges inconsistent with the limitations upon properties in the vicinity and zone in which such property is situated.

Staff review: Finding not met.

AMC section 17.40.050 (H)(1) limits the height of artwork to 11 feet when located within the front setback. If located within the buildable area for accessory buildings and structures, where the height limit is 15 feet, the proposed artwork would still not be permitted due to its excessive height in motion. As the Town has no record of previous variances from this requirement, granting the variance constitutes a special privilege inconsistent with the limitations upon properties in the vicinity and the R1-A zone.

C. Granting the Variance will not adversely affect the interest of the public or the interest of the residents and property owners in the vicinity of the premise in question.

Staff review: Finding met.

The Town Arborist has visited the site, reviewed the project plans, and provided a short memo supporting the existing screening from 399 Stevick Drive and 394 Stevick Drive on site. If approved by the Planning Commission, the applicant must also submit a landscape plan to be approved by the Town Arborist. A memo prepared by the Town Arborist is available at Attachment 4. Additionally, the neighbor at 394 Stevick Drive has provided a letter of support for the proposal. This letter is available at Attachment 5. Therefore, granting the variance will not adversely affect the interest of the public or residents, because of the nature of the site, the location of the sculpture, and sufficient screening on all sides.

D. The granting of the Variance is consistent with the objectives of the General Plan and the Zoning Code.

Staff review: Finding not met.

Land Use Policy 1.1 of the General Plan emphasizes the preservation of the Town's character as "scenic, semi-rural, thickly wooded residential area with abundant open space." The stated purpose of AMC Title 17: Zoning is to implement the General Plan. AMC Chapter 17.40 provides regulations that apply to accessory buildings and structures, including specific categories, such as "artwork." These regulations provide directions on the location, size and height of artwork within the Town's private properties. As this project does not comply with the height standards of the AMC and does not have special circumstances applicable to Finding A, this finding is not met.

PUBLIC NOTIFICATION

Notice of the proposed project was mailed to all property owners within 500 feet of the subject property. The applicant has provided a letter from the adjacent neighbor at 394 Stevick Drive supporting the proposal (Attachment 5), as the proposed project runs parallel to their existing driveway. To date, the Town has not received any other public comment or inquiries on the application.

CONCLUSION

The criteria under which the Planning Commission may grant a Variance are contained in AMC Chapter 17.16 and governed by State law. The Planning Commission may grant a Variance if it makes all four findings listed in this report. As indicated above, staff does not find that the proposed project meets all four findings required pursuant to AMC Section 17.16. Additionally, granting this variance may constitute a special privilege to this property that is not applicable to other property owners within the vicinity and R1-A zoning district. A Draft Variance Certificate for denial is provided at Attachment 6.

ALTERNATIVES:

The Planning Commission could approve or modify the request. Should the Planning Commission decide to approve the request the Commission would need to make the required findings in the affirmative and make the application subject to the Draft Variance Certificate for approval provided at Attachment 6.

RECOMMENDED FORMAL MOTION (DENIAL):

I move that the Planning Commission **deny** the Variance at 390 Stevick Drive to install a sculpture with a height of 22-feet 1-inch within the required front yard setback as all four of the required findings cannot be met for the reasons enumerated in the staff report.

ALTERNATIVE FORMAL MOTION (APPROVAL):

I move that the Planning Commission **approve** the Variance at 390 Stevick Drive to install a sculpture with a height of 22-feet 1-inch within the required front yard setback based on the findings outlined by the Planning Commission at this meeting and subject to the conditions listed in the draft Variance Certificate.

/s/ Christabel Soria Mendoza

Christabel Soria Mendoza, Associate Planner

Attachments:

1. Landscape Drawings / Plan Set
2. Signed Variance Application
3. Variance Request Letter
4. Town Arborist Memo
5. Neighbor's Letter of Support
6. Draft Variance Certificates