CITY OF SUNNYVALE
ADMINISTRATIVE HEARING

MINUTES
Thursday, March 2, 2006

2006-0087 – Application for a Variance on a 6,211 square-foot site from Sunnyvale Municipal Code section 19.34.040 to allow a six-foot setback where nine feet is required. The property is located at **734 Ashbourne Dr** (near E Fremont Ave) in an R-0 (Low-Density Residential) Zoning District. (APN: 309-06-016)

In attendance: Lorraine Guerrera, Applicant; Robert Harms, Neighbor; Andrew Miner, Administrative Hearing Officer; Steve Lynch, Project Planner; Luis Uribe, Staff Office Assistant.

Mr. Andrew Miner, Administrative Hearing Officer, on behalf of the Director of Community Development, explained the format that would be observed during the public hearing.

Mr. Miner announced the subject application.

Steve Lynch, Project Planner, stated that the applicant is proposing an addition of 290 square feet to an existing 1,798 square foot single-story residence. The addition is proposed in the rear and reducible front yard areas, and the house will total 2,088 square feet when completed. The scope of the project is to expand one of three bedrooms into a mater suite. The proposed home will have three bedrooms, family room, living room, kitchen, and a two-car garage.

As part of the project, the applicant is requesting that a portion of the new addition be constructed six feet from the property line, where nine feet is the minimum allowed by Sunnyvale Municipal Code (SMC). This street side yard is considered a front yard area and requires a 20-foot setback but is allowed to be reduced under SMC 19.34.040 to a minimum of nine feet. Staff could not make 2 of the 3 Findings. Therefore staff does not recommend approval.

Mr. Miner opened the public hearing.

Lorraine Guerrera, Applicant, received and reviewed a copy of the staff report. The applicant gave a brief statement on other properties in the neighborhood that have constructed a similar addition. Ms. Guerrera noted that the reason for this addition is to accommodate a handicapped person.

Mr. Miner stated that in order to pass a variance the project has to meet certain Findings. Mr. Miner asked the applicant if there was something unusual about the property that would prohibit the addition meeting the required set-back. The applicant stated that the addition is to help accommodate a person with special needs.

2006-0087 **734 Ashbourne Dr.**

Robert Harms, Neighbor, stated that the corner lot is a hazard as far as the field of view is concerned.

Lorraine Riess, Designer, stated that Mr. Harms statements were related more to parking issues.

Mr. Miner closed the public hearing.

Mr. Miner denied the application due to the inability to meet the Findings.

Mr. Miner stated that the decision is final unless appealed to the Planning Commission with payment of the appeal fee within the 15-day appeal period.

The meeting was adjourned at 2:34 p.m.

Minutes approved by:

Andrew Miner, Principal Planner

PLANNING COMMISSION MINUTES OF APRIL 10, 2006

2006-0087 – Appeal of a decision of the Administrative Hearing Officer for an application for a Variance on a 6,211 square-foot site from Sunnyvale Municipal Code section 19.34.040 to allow a six-foot setback where nine feet is required. The property is located at **734 Ashbourne Dr** (near E Fremont Ave) in an R-0 (Low-Density Residential) Zoning District. (APN: 309-06-016) SL

Gerri Caruso, Principal Planner, presented the staff report. Ms. Caruso said that staff is unable to make the findings to approve the requested variance and is recommending the Planning Commission uphold the decision of the Administrative Hearing Officer and deny the variance.

Chair Hungerford opened the public hearing.

Lorraine Guerrera Maciejowski, appellant, said the proposed plans are for an addition that would have a setback of 17 feet from the face of the curb instead of 20 feet. Ms. Maciejowski said she spoke with Teresa Zarrin, Associate Planner in the Planning Division and that she indicated that the home is zoned R-0 (Residential Low Density) requiring only an 8 foot setback. Ms. Maciejowski asked staff for clarification on what the setback requirement is. She commented that some of the corner lots in the neighborhood do not meet the setback requirements and this request for a variance would actually match some of the other corner lots. She said the proposed new addition would be built on the side and rear of the home and would be almost hidden due to a fence and landscaping. Ms. Maciejowski shared three pictures of other corner lots in the neighborhood that do not meet the setback requirements as the variances were "grandfathered in." She said the addition would not have a negative impact on the streetscape and would not affect the visual open space in the area. She also provided letters from two neighbors expressing support for the project. She shared a picture of a nearby house that is similar to the fence and landscaping that they plan to provide. She said that Andrew Miner, the Administrative Hearing officer, said at the Administrative Hearing that the design of the plan blended in and complimented the home. She said this addition is to accommodate the need to make extra room for a person in the home who has limited mobility.

Mieczyslaw Maciejowski, appellant, mentioned a few things regarding the topography of the property. He said their site is a corner lot and that there are a couple of storm drains that make the corner spot lower. He said their home is about five feet above the low spot and a few years ago they had FEMA survey the property so they could request an exemption from the flood insurance as their house is higher than the flood level. He said because of this elevation there may be an issue in getting the sewer line hooked up. Mr. Maciejowski said if this

variance is not approved it may be difficult and expensive to redesign the project and sewer line hook up and that the project may no longer be economically feasible.

Comm. Babcock referred to Ms. Maciejowski statement regarding a fence that would screen the building and asked staff what the setback would be for a fence. Ms. Ryan said a six foot tall fence may be placed on the property line, a seven foot tall fence could be placed on the property line with proper noticing to the neighbors that this has been proposed and any fence taller than seven feet would require a Use Permit that would go to Administrative Hearing. Comm. Babcock asked where the fence would be in relation to the addition. Ms. Ryan said she does not think a specific application for a fence has been submitted. Ms. Caruso said the setback of 6 feet would be measured from the property line the fence could be on property line so the fence could feasibly be six feet from the addition if approved.

Comm. Sulser commented to staff about the grade differential on the site and that the differential is part of the appellant's justification for requesting the variance. He asked staff how common it is for there to be grade differentials for sites in Sunnyvale. Ms. Ryan said Sunnyvale is primarily flat, but that it is not unusual for the houses to be graded up from the streets and sidewalks, especially on corner lots.

Comm. Klein asked staff if the grade differential makes this site special in any way. Ms. Caruso said the difference in elevation does not effect the variance or the ability to do the addition.

Chair Hungerford referred to Ms. Maciejowski request for clarification on the setback requirement and asked staff to respond. Ms. Ryan said without being present during the conversation she could only guess that possibly the Planner was not clear that the setback in question was referring to the street side of the property. Ms. Ryan confirmed that the required setback in question is a 9 foot minimum. Ms. Ryan explained how the setbacks are defined for corner lot properties.

Ms. Maciejowski said she felt that Ms. Zarrin was quite clear the zoning was R-0 and 8 feet. The appellant provided a photo for the Commissioners to view and said the fence is 11 feet 3 inches from the face of the curb. She also said she feels like the site has a unique grade and that it would be a financial hardship to redesign the sewer line and home in a different location. She said that the fence and landscaping would be similar to the neighbor's fence and landscaping. She thanked the Planning Commission for their consideration.

Chair Hungerford closed the public hearing.

Ms. Ryan commented that staff was not aware of any of the concerns that the appellant addressed regarding a sewer connection. She said if the Planning Commission thinks this needs to be considered, the item could be continued to allow time for staff to review the concern.

Comm. Babcock moved that this item be continued for two weeks to allow staff time to check into the sewer difficulties mentioned by the applicant. Comm. Klein seconded.

Comm. Babcock said that a variance is very difficult to approve. She said based on the information she has seen tonight that she cannot make the findings, but rather than deny the appeal she would like to see what staff finds out regarding the possible hardship in order to get a sewer connection for the property.

Chair Hungerford said that he will be supporting the motion and that he agrees with Comm. Babcock. He said he does not see the information to approve the variance, but the issue about the sewer connection warrants exploring.

Final Action:

Comm. Babcock made a motion on 2006-0087 to continue the item to April 24, 2006 to allow staff time to assess the sewer situation related to this property. Comm. Klein seconded.

Motion carried unanimously, 5-0, Comm. Simons absent.

This item is continued to the April 24, 2006 Planning Commission meeting.

PLANNING COMMISSION MINUTES OF APRIL 24, 2006

2006-0087 – Appeal of a decision of the Administrative Hearing Officer for an application for a Variance on a 6,211 square-foot site from Sunnyvale Municipal Code section 19.34.040 to allow a six-foot setback where nine feet is required. The property is located at **734 Ashbourne Dr** (near E Fremont Ave) in an R-0 (Low-Density Residential) Zoning District. (APN: 309-06-016) SL **(Continued from April 10, 2006)**

Steve Lynch, Associate Planner, presented the staff report. He said this item was continued from the April 10, 2006 meeting to have staff further research issues related to the flood zone and the sewer connection of the site. Staff requested that the applicant provide an estimate of the project cost difference depending on where the bathroom is located to determine if a change in the design would result in a more expensive sewer line connection that might be a financial hardship to the property owner.

Chair Hungerford asked staff if the applicant was able to provide the financial impact of a new connection. Mr. Lynch said the applicant provided this information to Planning staff and the Commissioners this evening and asked that the applicant discuss the information during the applicant presentation.

Chair Hungerford opened the public hearing.

Lorraine Guerrera Maciejowski, applicant, thanked the Planning Commission for the opportunity to clarify a few issues from the April 10, 2006 meeting. She summarized what had been reviewed. Ms. Maciejowski said that a staff member had complimented their design at the Administrative Hearing and that letters of approval from neighbors were provided. She said other areas discussed were the fence and landscaping, topography and grading of the site. She said that she feels the site shows "extraordinary topography" which is one of the findings for a variance. She said that the definition of extraordinary is "uncommon and unusual" and that she feels their site meets the definition. She also referenced the Americans with Disabilities Act (ADA) guidelines for design requirements for bathrooms, submitted a design that would meet the requirements and discussed some of the requirements. She said they need to remodel the bathroom to be ADA compliant to accommodate a relative living with them. She said, regarding the waste collection issue, that they consulted a California licensed building contractor and plumber and that her husband would report on the findings.

Mieczyslaw Maciejowski, applicant, reported the findings and provided a written statement from the contractor regarding the sewer connection. He described some of the findings, why they chose the proposed design for the addition, and some of the problems that would result if they had to redesign the addition

extending to the rear of the house rather than the side, taking into consideration the recently landscaped backyard. He said if a sewer connection had to be added on the Flicker Way side that the contractor estimated the project would cost an extra $20,000 and be disruptive to the neighborhood while putting in the new line. Mr. Maciejowski said he believes the most convenient design for the addition is the one proposed on the side of house that could be tied into the existing street sewer lines. He said he feels they have provided the necessary information for the variance so that the remodel will be both economically feasible and visually pleasing for the neighborhood.

Comm. Sulser asked Mr. Maciejowski how much the sewer hook up would cost if a variance were granted. Mr. Maciejowski said he is not sure what the cost would be to hook up to the existing sewer line, but if a separate sewer line is required, it will cost about $20,000 more including the disruption of sidewalks and streets while the new sewer line is being installed.

Comm. Babcock asked Mr. Maciejowski if they had considered extending the bedroom into the backyard and putting the bathroom on the east side of the home which would not require a variance. He said if they extended the bedroom to the rear of the house they would lose one of the dual paned windows and part of the useable backyard space. He said they could consider narrowing the addition in order to meet the setbacks, but it would not be practical and would not accommodate the size needed for the bathroom for a person with limited mobility.

Chair Hungerford closed the public hearing.

Trudi Ryan, Planning Officer, commented that the City Attorney advises that the ADA laws look for reasonable accommodation for facilities for those with disabilities which could be used as a reason, if the Planning Commission chooses, to approve the variance. Ms. Ryan said if the Commission determines that an additional sewer connection is a hardship that this hardship could also be an appropriate reason to approve the variance along with the ADA component.

Chair Hungerford commented to Ms. Ryan that he thought the Planning Commission was to consider the property configuration only when considering a variance and not at the applicant. Ms. Ryan said the code regulates that to grant a variance that something has to be unique about the "property or the use." She said, in this case, the use could be the ADA compliant bathroom.

Comm. Babcock moved for Alternative 1, to deny the appeal and uphold the decision to deny the Variance. Comm. Simons seconded the motion.

Comm. Babcock said she was unable to make the findings and that she feels there are alternative designs for the addition that can be considered using part of the backyard rather than the side yard.

Comm. Simons said he thinks that adding a secondary sewer line seems unnecessary and that there are alternatives that would be less expensive than $20,000.

Final Action:

Comm. Babcock made a motion on 2006-0087 to deny the appeal and uphold the decision of the Administrative Hearing Officer to deny the Variance. Comm. Simons seconded.

Motion carried unanimously, 5-0, Vice Chair Fussell absent.

This item is appealable to City Council no later than May 9, 2006

ADA compliant bathroom

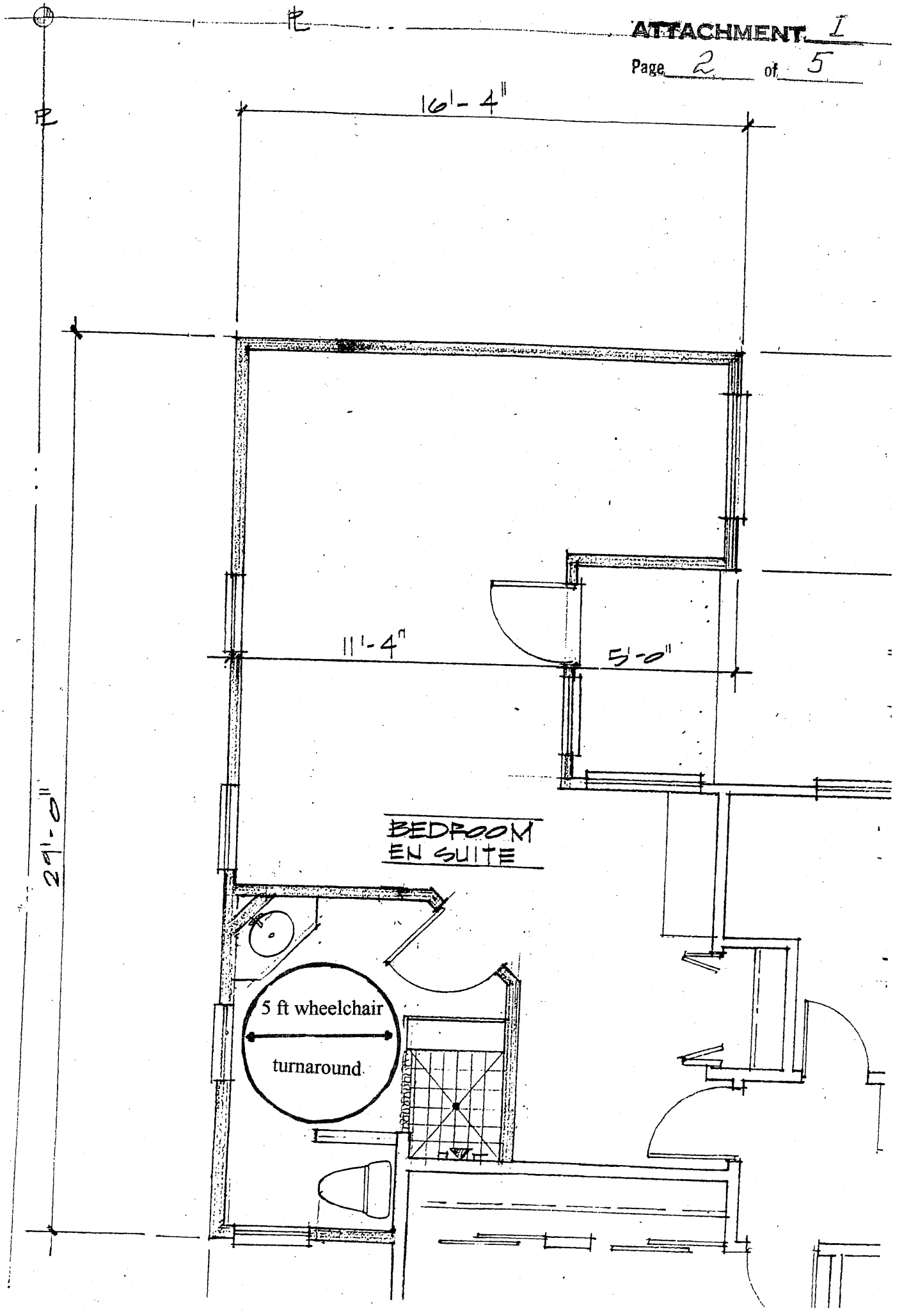
1. Entry doors should be a minimum of **36 inches** to accommodate a wheelchair.

2. **Wheelchair turnaround should be 5ft in diameter**

3. Inside dimensions of the inside of the **shower** must be at least **36 x36** inches , with a curb no higher than ½ inch.
   Grab bars for support and ADA lever type handles are required.
   If a fold down chair is used, handles needs to be within easy reach of the on/off valves. The shower head should be an adjustable height type.

4. The space in front of the toilet should be **36 inches**. The toilet can be set into a **36 inch** space with grab bars and needs to be **3.5 inches higher** than a normal toilet with an elongated style.

5. The sink and vanity needs to be lower than a standard sink with an open access so that a wheelchair can easily roll under the counter. Plumbing pipes need to be covered to avoid heat burns and the sink should have ADA approved lever knobs.


16'-4"
11'-4"
5'-0"
29'-0"
BEDROOM
EN SUITE
5 ft wheelchair
turnaround

WOODSTOCK BUILDERS
General Building Contractor
798 Vista Grande Avenue
Los Altos, CA 94024
(650) 966-1344
California State License No. 555991

20 April 2006

Mr. Tony Maciejowski

Subject: 734 Ashborne Avenue
Sunnyvale, CA 94087

Dear Mr. Maciejowski:

After performing a site review of your subject residence, it is in my professional opinion, along with that of a California licensed plumber, that additional bathroom should be located on the Flicker Way side of your residence for the following reasons:

- The existing underfloor grade conditions allow for a clean tie-in to the existing four inch sewer line;
- The underfloor framing will not be disturbed;
- Access to the sewer clean outs will be easily available; and
- Disturbance of exterior grade changes will be kept to a minimum

Regarding the alternate proposal of adding a bathroom to the rear of your residence, the necessary grade to achieve proper sewage flow will be difficult because:

- Existing underfloor framing removal could cause structural issues;
- Given the distance from the front to the back of the house and the depth necessary to tie into the existing sewer could damage the existing line located in the front yard

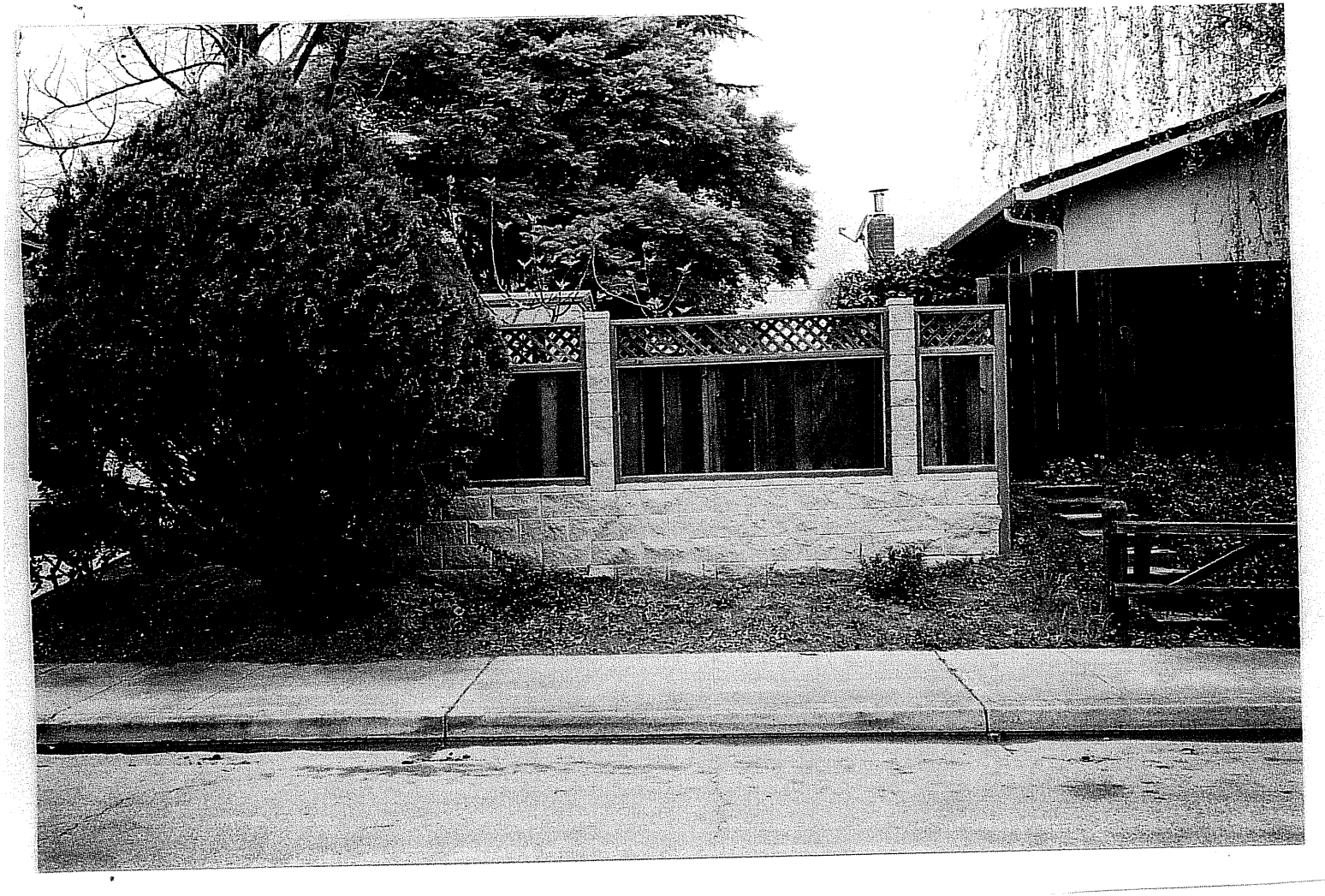
In closing, the possibility of adding a new sewer tie-in to the Flicker Way side of your residence would be cost prohibitive in an amount exceeding $20,000 along with disruption to your neighbors and city traffic.

If I can be of further assistance to you regarding this matter, please do not hesitate to contact me. I can be reached at the letterhead address and by telephone at (650) 966-1344.

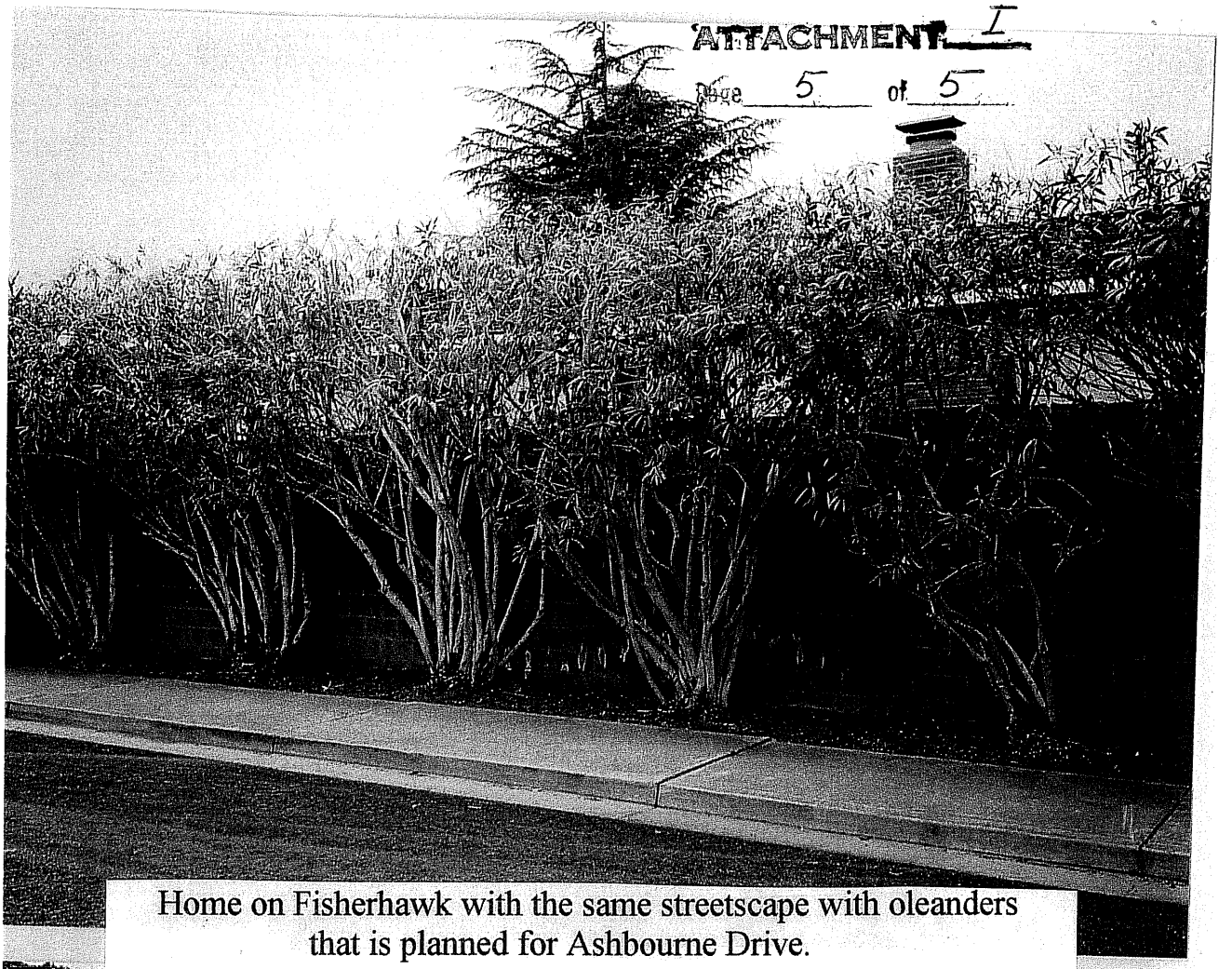
Thank you and best regards,

WOODSTOCK BUILDERS

Don E Evans
Owner



Proposed fence at 734 Ashbourne on the Flicker side



Home on Fisherhawk with the same streetscape with oleanders that is planned for Ashbourne Drive.