

**August 26, 2008**

SUBJECT: **2008-0183:** Appeal by the applicant of an application for related proposals located at **795 Nisqually Drive** (near Lewiston Drive) in an R-1 (Low Density Residential) Zoning District.

Motion **Use Permit** to allow two accessory utility buildings to be located between the face of the house and public street;

Motion **Variance** to allow side yard setbacks of 1' and zero lot line where 6' minimum is required.

REPORT IN BRIEF

Existing Site Conditions Single-Family Residence

Surrounding Land Uses

North Serra Elementary School

South Single-Family Residence

East Single-Family Residence

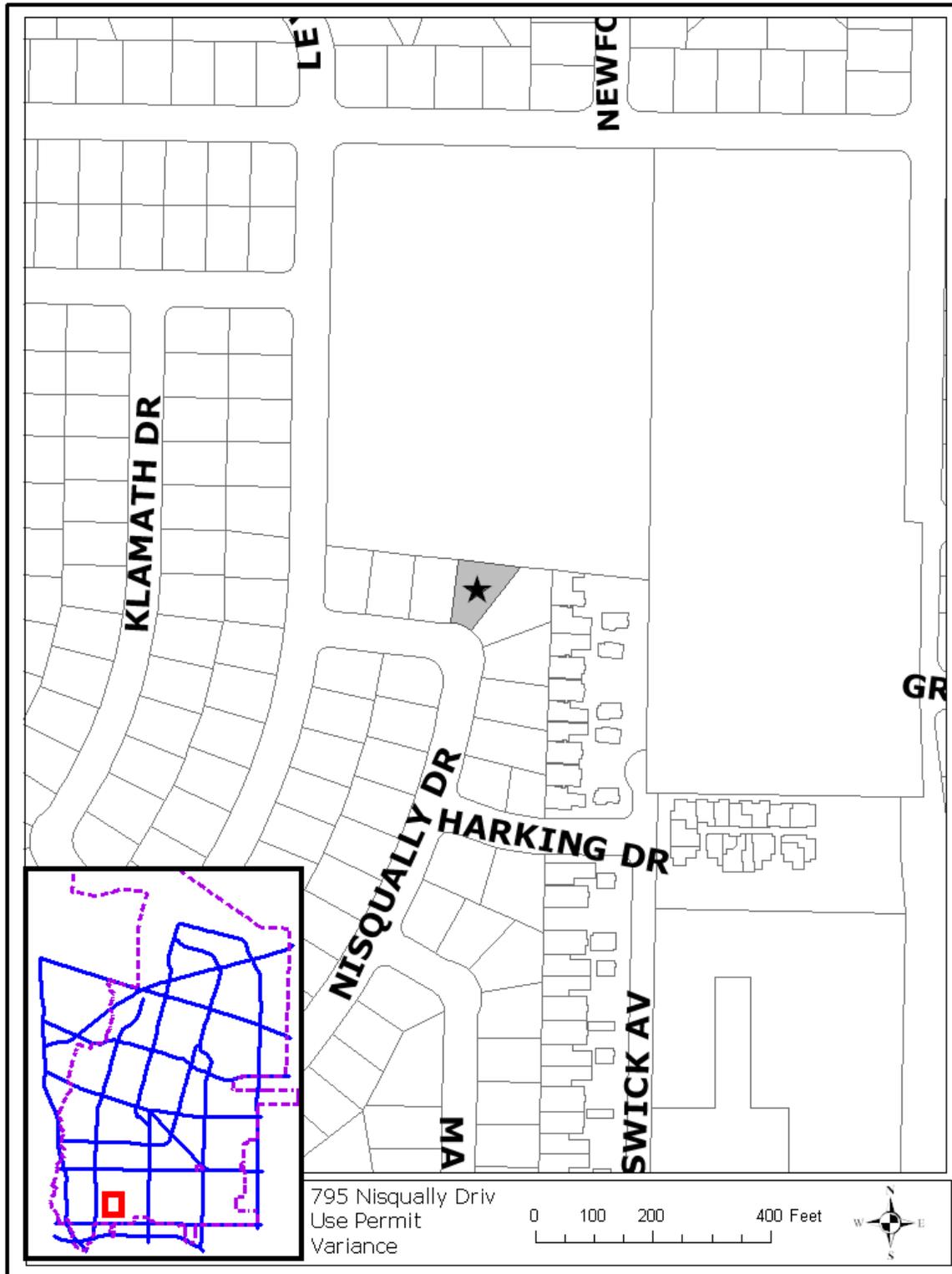
West Single-Family Residence

Issues Aesthetics

Environmental Status A Class 1 Categorical Exemption relieves this project from California Environmental Quality Act provisions and City Guidelines.

Planning Commission Action Denied the Use Permit and Variance

Staff Recommendation Deny the appeal and uphold the decision by the Planning Commission, and deny the Use Permit and Variance.



PROJECT DATA TABLE

	EXISTING	PROPOSED	REQUIRED/ PERMITTED
General Plan	Residential Low Density	Same	Residential Low Density
Zoning District	R-1	Same	R-1
Lot Size (s.f.)	8,121	Same	8,000 min.
Gross Floor Area (s.f.)	1,842	1,945 (1,842 residence, 103 total accessory utility buildings)	3,600 max.
Lot Coverage (%)	22.7%	Same	45% max.
Accessory Utility Building Height (ft.)	N/A	Structure A=8'-6" Structure B=10'	15' max. without Use Permit
Accessory Utility Building Setbacks (Facing Property)			
Front	N/A	Structure A=50' Structure B=38'	20' min.
Left Side	N/A	Structure A=54' Structure B=53'	9' min.
Right Side	N/A	Structure A=1' Structure B=0	6' min.
Rear	N/A	Structure A=64' Structure B=72'	Structure A=6' min. Structure B=10' min.
Distance to Residence	N/A	Structure A=2' Structure B=13'	2' min.



Starred items indicate deviations from Sunnyvale Municipal Code requirements.

ANALYSIS

Description of Proposed Project

The project originated as a Neighborhood Preservation complaint, in which two accessory utility buildings (shade structures) were under construction without appropriate permits. The purpose of the structures is to provide shade for two rhododendrons until the existing adjacent trees are mature enough to provide shade. The rhododendrons are between 7' and 9' in height, and the proposed height for the shade structures would provide approximately 1' of clearance for the shrubs to grow. In total, the proposed shade structures would be 103 square feet in size. The subject property is a pie-shaped lot, and the shade

structures are located within a fenced area within the required side yard setback, in front of the existing home. Sunnyvale Municipal Code (SMC) section 19.40.020 requires that a Use Permit be obtained for accessory utility buildings located between the face of the building and a public street.

Additionally, SMC section 19.40.040 requires that accessory utility buildings meet the side yard setbacks of the Zoning district. One of the shade structures would be located up the property line along the right side (zero setback), while the second structure would be 1' from the right side property line. The R-1 Zoning district requires a minimum side yard setback of 6'. The proposed project would result in substandard side yard setbacks for both shade structures; therefore a Variance is also required.

Background

Administrative Hearing – March 31, 2008: This project was previously reviewed at the March 31, 2008 Administrative Hearing. An adjacent property owner attended the meeting in opposition to the project, stating concerns regarding visual impacts. The Administrative Hearing Officer denied the Use Permit and Variance due to inability to make the required findings. The minutes from the hearing are contained in Attachment G.

During the public hearing, the neighbor submitted a site plan and elevation drawings showing a discrepancy between the setbacks measured by the applicant, and the setbacks that would actually be built. The applicant's submittal calls out a right side yard setback of 1' for Structure A, and 2'-6" for Structure B. Staff has confirmed this discrepancy by measuring the location of the existing portions of the structure. According to the location of the posts that have already been installed, the actual setbacks would be 1' for Structure A and zero lot line for Structure B. This report reflects this updated setback information.

Planning Commission Hearing – June 9, 2008: On June 9, 2008, the appeal was considered by the Planning Commission and denied on a 6-1 vote. The Planning Commission expressed concerns regarding the visual impact and required findings. On June 16, 2008, the applicant filed an appeal of the Planning Commission's decision (Attachment I – Applicant's Appeal Letter).

Environmental Review

A Class 1 Categorical Exemption relieves this project from California Environmental Quality Act provisions and City Guidelines. Class 1 Categorical Exemptions include minor alterations to existing facilities.

Use Permit/Variance

Detailed Description of Use: The applicant proposes to build two accessory utility buildings (shade structures), to be located between the face of the home and the public street. Structure "A", as labeled on the site and architectural plans in Attachment C, is 45 square feet in size, while structure "B" is 58 square feet in size. The structures would total 103 square feet in size. The purpose of the shade structures is to provide shade for two existing rhododendrons, until the existing adjacent maple trees are mature enough to provide shade. There was a tree that used to provide adequate shade to the shrubs, which was recently removed. The applicant requests that the shade structures be installed for five years.

Site Layout: The subject property is pie-shaped, and consists of a single-family home that faces Nisqually Drive. The property owner installed landscaping improvements a few years ago, which included two rhododendrons located within the right side yard, adjacent to the existing entry courtyard. Structure A would be 8'-6" in height, and would be located approximately 2' from the face of the home. Structure B would be 10' in height, and would be located approximately 13' from the home. The proposed height of the structures would be necessary to adequately provide shelter to the full height of the rhododendrons, while allowing approximately 1' clearance for the shrubs to grow.

SMC 19.40.040 requires that the structures meet the setback requirements of the Zoning district, which is 6'. The project deviates from this requirement, as the proposed side yard setback for structure A is 1' and structure B is zero lot line.

Project Alternatives: As requested by staff, the applicant has contacted various nurseries to obtain information regarding alternative shading options, including Yamagami's Nursery in Cupertino. The applicant states that one alternative that was explored was to use a cloth to provide shade. However, the nursery advised the applicant that putting cloth directly on the leaves would burn the leaves, and could potentially affect the health of the rhododendrons. The applicant states that she was advised that the most effective alternative to shade to the rhododendrons would be the construction of shade structures.

Staff has also contacted Summer Winds Nursery in Sunnyvale. Staff was provided with similar advice regarding the shade cloth. However, the nursery also suggested a spray-on product that would form a clear film on plants, which would help prevent moisture loss and provide protection from the sun. The product would be applied to the leaves of the plant once per season. In addition, staff has explored the option of transplanting the rhododendrons to another location with the applicant. The exiting rear yard provides almost

3,000 square feet of usable open space, which can potentially be used to accommodate the two shrubs.

However, if the project is approved, staff recommends that the two shade structures only be installed for a maximum of five years from the approval date, as requested by the applicant. Time limits are not permitted to be placed on Variance applications, as Variances run with the land. However, the time limit would be placed on the Use Permit, and the Variance would only be valid with the approved Use Permit. An extension of this deadline would require a subsequent Administrative Hearing (Attachment B – Recommended Conditions of Approval).

Architecture: The existing home is single-story, and is made of stucco siding and wood shake roof. No modifications are proposed to the home. The proposed shade structures would be constructed of wooden posts and wooden trellis roofing material.

The following Guidelines were considered in the analysis of the project architecture.

Single Family Home Design Techniques	Comments
<i>3.10 Relate the design of accessory structures to those of the main structure.</i>	The proposed shade structures are made of wooden posts and wooden trellis roofing material. The proposed design does not detract from the design of the home and existing fences.

Landscaping: The site contains several trees, shrubs and ground cover in the front yard and rear yard. No existing trees or landscaping are proposed for removal as part of this project.

Parking/Circulation: The site meets the parking requirements with the existing two covered garage spaces and two uncovered driveway spaces. No modifications are proposed to the garage and driveway.

Compliance with Development Standards/Guidelines: The proposed project deviates from SMC 19.40.040, which requires that accessory utility buildings meet the setback requirements for the Zoning district. The applicant proposes a side yard setback of 1’ for structure A and zero lot line for structure B, where 6’ minimum is required in the R-1 Zoning district.

Expected Impact on the Surroundings: The proposed shade structures would be visible from the street frontage and the adjacent property along the right side. There is an existing 6’-tall fence that encloses the entry courtyard,

which is located outside of the required front yard setback line. Additionally, there is an existing 6'-tall fence along the side property line. There is also an existing hedge along the side property line on the adjacent lot, which would also help screen one of the structures from view. The existing fences would only provide partial screening of the shade structures, as the shade structures would be approximately 2'-6" and 4' taller than the existing fences. Therefore, staff believes that the structures could result in adverse aesthetic impacts to the street frontage and the adjacent neighbor along the right side.

Fiscal Impact

No fiscal impacts other than normal fees and taxes are expected.

Public Contact

Notice of Public Hearing	Staff Report	Agenda
<ul style="list-style-type: none">• Published in the <i>Sun</i> newspaper• Posted on the site• 5 notices mailed to property owners and residents adjacent to the project site	<ul style="list-style-type: none">• Posted on the City of Sunnyvale's Website• Provided at the Reference Section of the City of Sunnyvale's Public Library	<ul style="list-style-type: none">• Posted on the City's official notice bulletin board• City of Sunnyvale's Website

Administrative Hearing – March 31, 2008: This project was originally reviewed at the Administrative Hearing of March 31, 2008. An adjacent property owner attended the meeting and expressed opposition to the proposed project due to the visual impact to his property. The neighbor submitted a site plan, elevation drawing and site photos showing that Structure B would encroach 5" over the right side property line (Attachment H - Information Submitted by Neighbor). This information is based on the location of the existing posts. However, the applicant has confirmed with staff that the structure will be located up to the property line and would not encroach into the adjacent neighbor's property.

The Administrative Hearing Officer also expressed concerns regarding the visual impact of the structures. Therefore, the Administrative Hearing Officer denied the Use Permit and Variance due to inability to make the required findings. Minutes of this hearing are contained in Attachment G.

Planning Commission Hearing – June 9, 2008: The applicant appealed the decision of the Administrative Hearing Officer, and the appeal was heard at the Planning Commission hearing of June 9, 2008. Planning Commission stated similar concerns that were expressed by the Administrative Hearing Officer and the precedent that could be set if the project is approved. The Planning Commission denied the appeal on a 6-1 vote, upholding the decision by the Administrative Hearing Officer to deny the Use Permit and Variance requests.

During the hearing, concerns were raised regarding the existing code requirements for accessory utility buildings. The Planning Commission requested that staff study the different types of accessory utility buildings, such as storage sheds and landscape structures. A current study issue, “Consideration of Changes to Single-Family Home Development Standards and Accessory Utility Building Standards”, addresses this issue and is tentatively scheduled for City Council to consider at the August 12, 2008 public hearing. The recommended code changes for accessory utility buildings would not impact the required setbacks for the two proposed structures, as the structures would still need to meet the setbacks for the Zoning District.

The only impact that the recommended code changes would have is that a staff-level Miscellaneous Plan Permit, in lieu of a Use Permit, would be required for “open garden features” (i.e. arbors, gazebos, trellises) to be located between the face of a building and the public street. However, a Variance would be still be required for setback deficiencies and placing a time limit on the structures would not be permitted.

Conclusion

Applicant’s Justification: The applicant has addressed the Findings for a Variance and Use Permit in Attachment E – Applicant’s Letter of Justifications. The applicant has also submitted an appeal letter in Attachment I, which addresses the same issues. The applicant contends the following:

1. The location of the two rhododendrons provides a physical hardship, which exposes the shrubs to harmful sunlight. The sole purpose of the proposed structures is to provide adequate shade for the shrubs until the adjacent maple tree is mature enough to provide shade.
2. The project would not be detrimental because the structures are only temporary, and would help to preserve the existing landscaping in the front yard.
3. The applicant would not be granted a special privilege because the structures would be removed as soon as the maple tree is mature enough to provide shade for the rhododendrons.

Discussion: The following is staff's discussion of the required findings and appeal request:

1. The first required finding for approving a Variance is that the property or use involves a unique or exceptional circumstance. Although the location and size of the two rhododendrons limit the ability of the property owner to relocate or reduce the size of the shade structures, staff believes that there are reasonable alternatives that exist, which would allow the applicant to meet code requirements and preserve the shrubs.

As suggested by a local nursery, one alternative is a spray-on product that would form a clear film on the plants. The product would prevent moisture loss and provide protection from the sun, which would help achieve the goal of the property owner to save the existing rhododendrons. Another alternative is to transplant the two shrubs to another location on-site. The property is 8,121 square feet in size and provides almost 3,000 square feet of usable open space in the rear yard, which could be used to accommodate the two shrubs. As a result, staff cannot make the first finding.

2. The second required finding is that the granting of a Variance will not be detrimental to adjoining properties and uses. The existing fences and landscaping help to provide partial screening, however, the two shade structures would still be visible from the street frontage and adjacent property to the right. As a result, staff cannot make the finding that this project will not be detrimental to adjoining properties and uses.
3. The third required finding for a Variance is that granting a Variance meets the intent of the zoning ordinance and does not grant special privileges to the proposed use or site. There are no other similar-type of structures in the neighborhood that are visible from the street frontage. Therefore, staff cannot make this third finding.

Findings and General Plan Goals: Staff is recommending denial for this project because the Findings (Attachment A) were not made. However, if the Planning Commission is able to make the required findings, staff is recommending the Conditions of Approval (Attachment B).

Conditions of Approval: If the project is approved, staff recommends the Conditions of Approval located in Attachment B.

Alternatives

1. Deny the appeal and uphold the decision of the Planning Commission and deny the Use Permit, and deny the Variance.
2. Grant the appeal and approve the Use Permit and Variance with the recommended conditions of approval.
3. Grant the appeal and approve the Use Permit and Variance with modified conditions of approval.

Recommendation

Alternative 1.

Reviewed by:

Hanson Hom
Director of Community Development

Reviewed by: Gerri Caruso, Principal Planner
Prepared by: Noren Caliva, Project Planner

Approved by:

Amy Chan
City Manager

Attachments:

- A. Recommended Findings
- B. Recommended Conditions of Approval
- C. Site and Architectural Plans
- D. Letter from the Applicant
- E. Applicant's Letter of Justifications
- F. Site Photos by Staff
- G. Administrative Hearing Minutes – March 31, 2008
- H. Information Submitted by Neighbor, dated March 31, 2008
- I. Applicant's Appeal Letter, dated June 16, 2008
- J. Planning Commission Hearing Minutes – June 9, 2008

Recommended Findings - Use Permit

Goals and Policies that relate to this project are:

Land Use and Transportation Element

Policy N1.4 – *Preserve and enhance the high quality character of residential neighborhoods.*

1. The proposed use attains the objectives and purposes of the General Plan of the City of Sunnyvale (*Finding Not Met*).

The proposed project is only partially screened from view with existing fences and hedges. However, the two shade structures would be 2'-6" and 4' taller than the existing fences. Therefore, the proposed project may result in visual impacts to the street frontage and adjacent properties.

2. The proposed use ensures that the general appearance of proposed structures, or the uses to be made of the property to which the application refers, will not impair either the orderly development of, or the existing uses being made of, adjacent properties (*Finding Not Met*).

Locating a structure close to property lines may adversely impact adjacent neighbor to the right. Moreover, an approval of the project may set a precedent to allow structures close to property lines.

Recommended Findings - Variance

1. Because of exceptional or extraordinary circumstances or conditions applicable to the property, or use, including size, shape, topography, location or surroundings, the strict application of the ordinance is found to deprive the property owner or privileges enjoyed by other properties in the vicinity and within the same zoning district. (*Finding Not Met*).

Although the location and size of the two rhododendrons limit the ability of the property owner to relocate or reduce the size of the shade structures, staff believes that there are reasonable alternatives that exist, which would allow the applicant to meet code requirements and preserve the shrubs. Alternatives include a spray-on product that would form a clear film on the plants, which would help prevent moisture loss and provide protection from the sun. Another alternative is to transplant the two shrubs to another location on-site. The property is 8,121 square feet in size and provides almost 3,000 square feet of usable open space in the rear yard, which could be used to accommodate the two shrubs.

2. The granting of the Variance will not be materially detrimental to the public welfare or injurious to the property, improvements or uses within the immediate vicinity and within the same zoning district. (*Finding Not Met*).

The existing fences and landscaping help to provide partial screening, however, the two shade structures would still be visible from the street frontage and adjacent property to the right. As a result, staff cannot make the finding that this project will not be detrimental to adjoining properties and uses.

3. Upon granting of the Variance, the intent and purpose of the ordinance will still be served and the recipient of the Variance will not be granted special privileges not enjoyed by other surrounding property owners within the same zoning district. (*Finding Not Met*).

There are no other similar-type of structures in the neighborhood that are visible from the street frontage. In addition, an approval of the Variance may also set a precedent for other Variance applications in the neighborhood.

Recommended Conditions of Approval if the Use Permit and Variance are Granted:

In addition to complying with all applicable City, County, State and Federal Statutes, Codes, Ordinances, Resolutions and Regulations, Permittee expressly accepts and agrees to comply with the following conditions of approval of this Permit:

Unless otherwise noted, all conditions shall be subject to the review of approval of the Director of Community Development.

1. GENERAL CONDITIONS

- A. Execute a Use Permit document prior to issuance of a building permit.
- B. The Variance is valid only in conjunction with approved Use Permit 2008-0183.
- C. The Use Permit and Variance shall be null and void two years from the date of approval by the final review authority if the approval is not exercised, unless a written request for an extension is received prior to expiration date.
- D. Project shall be in conformance with the plans approved at the public hearing. Minor changes may be approved by the Director of Community Development; major changes may be approved at a public hearing.
- E. The Use Permit for the use shall expire if the use is discontinued for a period of one year or more.
- F. Obtain a building permit, if required by the Building Safety Division. The Conditions of Approval shall be reproduced on a page of the plans submitted for a building permit for this project, if a building permit is required.
- G. The two shade structures shall be installed for a maximum of five years from the approval date. An extension of this permit may be requested through an Administrative Hearing.
- H. Construction of the two shade structures shall be completed within 30 days of the approval date.
- I. No portions of the shade structures may overhang onto the adjacent property.

IN POCKETS
WOOD CANS
(EN)
SAKAGE

SCREEN (SOLID)

BANK BOX

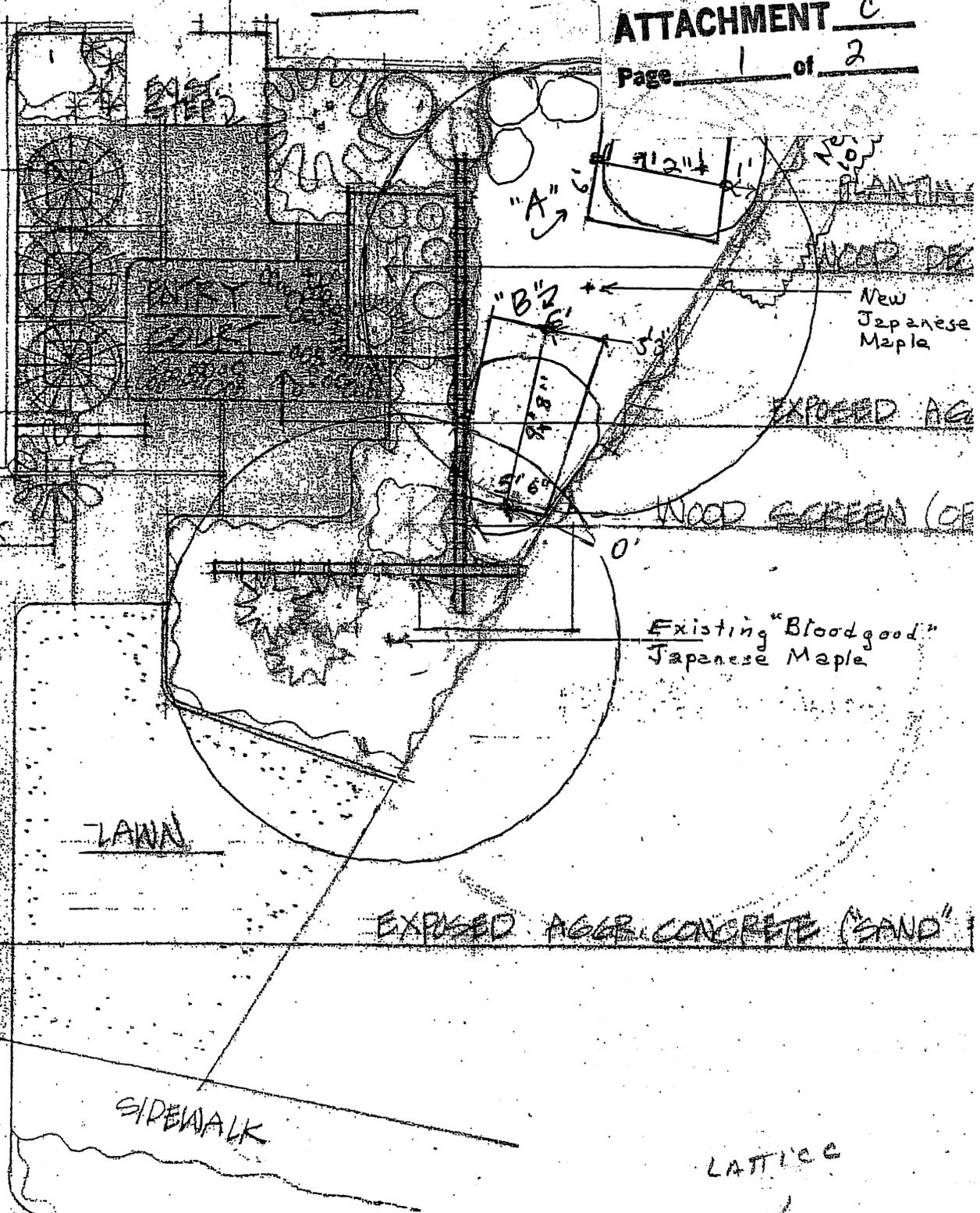
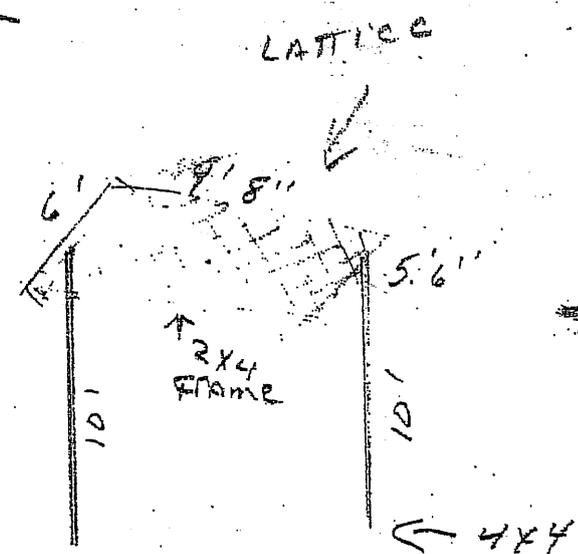
LAWN

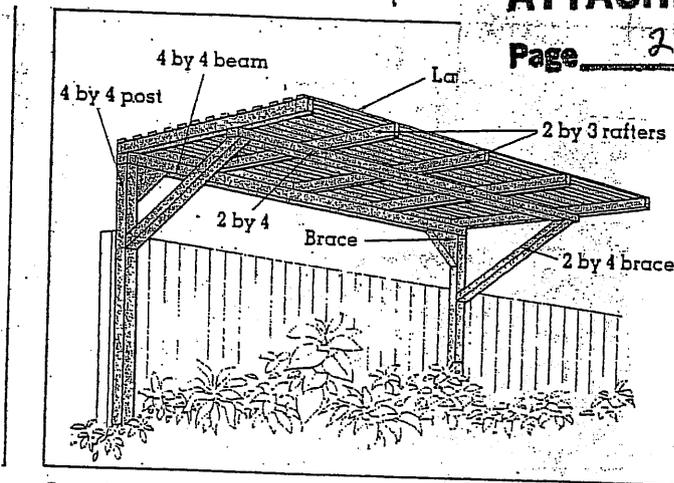
EXPOSED AGGR. CONCRETE ("SAND")

SIDEWALK

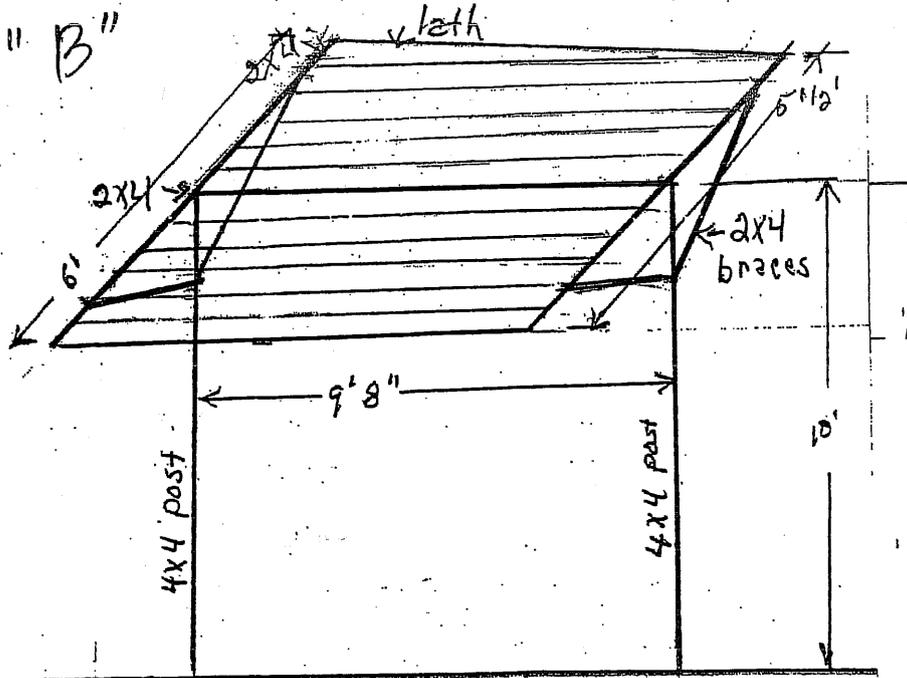
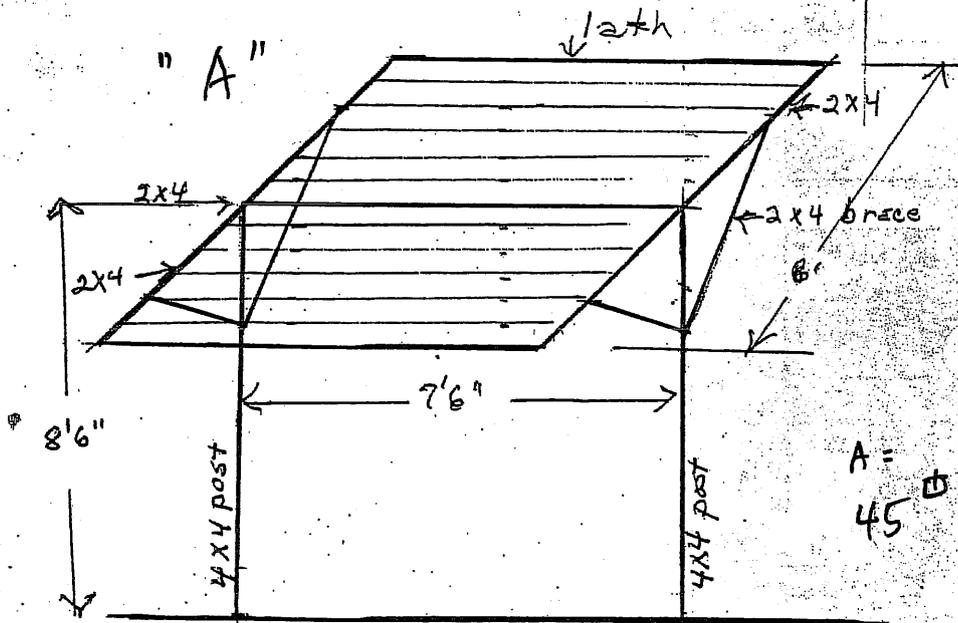
NORTH

side view





Attached to fence, lath overhang gives protection to shade-loving trees and plants. In place of lath, you could use shade cloth or a bamboo shade.



Total AUB = 103 \square

Project Description

795 Nisqually Dr.

ATTACHMENT D

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The only reason for the small structures is to provide temporary shade for two rhododendrons until a newly planted Japanese maple is able to provide shade. Formerly there was a mayten tree in that location, which covered the rhododendrons. However it is the nature of the mayten to send up suckers, and this one sent up dozens and dozens of them. I cut them down, but they immediately grew back again. Because of a ground cover of vinca minor and some raphiolepis shrubs, there was no keeping up with the situation. It grew worse every year. We did not know of this problem with maytens when we planted it. I am eighty-four years old and since four years, a widow. I finally had to have the mayten removed and I replaced it with a Japanese maple tree "Bloodgood", of which I already have a fine example on the outside of the front fence.

However until the new maple tree grows taller, it is necessary to put up a temporary shade for the rhododendrons. It will be only temporary. My front yard was planted according to a fine design by a Japanese landscape architect in Berkeley. I am very proud of the design and neighbors have entered my yard without my permission and copied the very striking fence and there are copies of it in the area. I would not put up temporary shade structures if it were not necessary and they will be removed as soon as possible so that the front yard can return to its original state. One of the rhododendrons was badly burned after the removal of the mayten until we put up a temporary cover. It is recovering. The other receives some shade from the mature Japanese maple, but it still gets too much sun until the new tree can grow enough to protect it.

My neighbor suggested I cut back the rhododendrons to under six feet and then my temporary shelter would not be seen. The nursery told me this would be destructive and perhaps fatal to them. These rhododendrons were purchased twenty-five years ago at a nursery in the hills of Woodside that specialized in them and they are very important to me. They are covered with flower buds and will have a splendid show in April or May. I am making a great effort and expense to save them as a permanent asset to my yard and also the neighborhood. The man who helps me with projects I cannot manage myself has drawn up a design which will be more attractive than the green netting which was all the nursery was able to provide for the first cover. The main thing is it will save my rhododendrons until the new tree can take over.



VARIANCE JUSTIFICATIONS

All three of the following findings must be made in order to approve a Variance application.

The Sunnyvale Municipal code states that all three of the following justifications must be met before granting the Variance. Please provide us information on how your project meets all of the following criteria.

1. Because of exceptional or extraordinary circumstances or conditions applicable to the property, or use, including size, shape, topography, location or surroundings, the strict application of the ordinance is found to deprive the property owner of privileges enjoyed by other properties in the vicinity and within the same zoning district. *After the mayten tree was removed, the rhododendrons received too much sun. On one of the bushes, one fourth of the leaves turned black. I had a structure built to shade it immediately and removed the worst of the damage to the plant and as a result, it has recovered. Without the protection it would be dead. The other rhododendron receives some protection from the elder Japanese maple, but not sufficient. The plant has yellowed, but not blackened yet. I was in the process of constructing a shade for it, when my neighbor intervened.*
AND
2. The granting of the Variance will not be materially detrimental to the public welfare or injurious to the property, improvements, or uses within the immediate vicinity and within the same zoning district. *The structures to shade the plant are only temporary until the new Japanese maple can grow enough to shade the rhododendrons. I am proud of my landscape plan and I certainly don't want to ruin it with these unattractive temporary structures, if it weren't necessary. The Japanese maple will grow and provide the necessary shade just as the mayten tree did formerly, if it is given a chance. Actually I am very proud of my front yard and I want to maintain it.*
AND
3. Upon granting of the Variance, the intent and purpose of the ordinance will still be served and the recipient of the Variance will not be granted special privileges not enjoyed by other surrounding property owners within the same zoning district. *It's only a temporary structure to save these two rhododendrons until the maple tree can protect them. It will come down as soon as possible.*

If you need assistance in answering any of these justifications, contact the Planning Division staff at the One-Stop Permit Center.



USE PERMIT/SPECIAL DEVELOPMENT JUSTIFICATIONS

ATTACHMENT E

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One of the two following findings must be made in order to approve a Use Permit or Special Development Permit application.

The Sunnyvale Municipal code states that at least one of the following two justifications must be met before granting the Use Permit or Special Development Permit. Please provide us information on how your project meets at least one of the following criteria.

1. The proposed use attains the objectives and purposes of the General Plan of the City of Sunnyvale as the project ...

OR

2. The proposed use ensures that the general appearance of proposed structures, or the uses to be made of the property to which the application refers, will not impair either the orderly development of, or the existing uses being made of, adjacent properties as ...

The structures are only temporary, not permanent. The tree will grow and then the structures will come down. I don't want to change the landscape architect's plan in any way. The structures have really minimal impact on my neighbor. Only one post is visible from their window because of their tall hedge, their rose bushes and my rhododendrons.

If you need assistance in answering either of these justifications, contact the Planning Division staff at the One-Stop Permit Center.



View from street
frontage

03/26/2008 13

View from court yard



01/07/2008 14



**CITY OF SUNNYVALE
ADMINISTRATIVE HEARING**

ATTACHMENT G
Page 1 of 2

**MINUTES
Wednesday, March 31, 2008**

2008-0183: Application for related proposals located at **795 Nisqually Drive** (near Lewiston Drive) in an R-1 (Low Density Residential) Zoning District. (APN: 323-23-006);

- **Use Permit** to allow two accessory utility buildings to be located between the face of the house and public street;
- **Variance** to allow a side yard setback of 1' and 2' 6" where a 6' minimum is required.

In attendance: Bernice Peterson, Applicant; Kevin Robins; Neighbor; Gerri Caruso, Administrative Hearing Officer; Noren Caliva, Project Planner; Luis Uribe, Staff Office Assistant.

Ms. Gerri Caruso, Administrative Hearing Officer, on behalf of the Director of Community Development, explained the format that would be observed during the public hearing.

Ms. Caruso announced the subject application.

Noren Caliva, Project Planner, stated that the project originated as a Neighborhood Preservation complaint, in which two accessory utility buildings (shade structures) were under construction without appropriate permits. The purpose of the structures is to provide shade for two rhododendrons until the existing adjacent trees are mature enough to provide shade. The rhododendrons are between 7' and 9' in height, and the proposed height for the shade structures would provide approximately 1' of clearance for the shrubs to grow. In total, the proposed shade structures would be 103 square feet in size. The subject property is a pie-shaped lot, and the shade structures are located within a fenced area within the required side yard setback, in front of the existing home. Sunnyvale Municipal Code (SMC) section 19.40.020 requires that a Use Permit be obtained for accessory utility buildings located between the face of the building and a public street.

Additionally, SMC section 19.40.040 requires that accessory utility buildings meet the side yard setbacks of the Zoning district, and be at least 5' from the home. The proposed project would result in substandard side yard setbacks for both shade structures, and a substandard distance to the home for one of the structures.

Ms. Caruso opened the public hearing.

Bernice Peterson, Applicant, received and reviewed a copy of the staff report. Mr. Peterson stated that she had a tree removed last year that provided shade for other vegetation that requires shade. She had a handyman create some type of covering to shade the plants. The applicant stated that all of her neighbors were okay with the structure except for one. She also stated that she is very proud of her landscaping and

feels that the neighborhood benefits from it. Ms. Caruso stated that the structure is visible from the street.

Kevin Robins, Neighbor, submitted pictures taken of the structure. Mr. Robins stated that the structure she is proposing will be placed partially on his side of the property line, based on the plans. He also mentioned that the applicant could have allowed the tree to stay in place to provide shade even though her only problem with the tree was regarding maintenance. He also stated that the type of vegetation she has can be easily transplanted. Mr. Robins also said that the existing structure does not meet the required one foot set back as the structure is much closer to the home. He also wanted to know that since the structures are temporary why did the applicant pour concrete for the posts. He also mentioned that you can see the structure from their property.

Ms. Peterson stated that the drawings are accurate and that no part of the structure will be on her neighbor's property. She also mentioned that she tries to take care of her landscaping and that this structure is temporary.

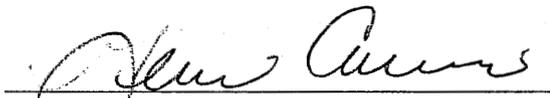
Ms. Caruso closed the public hearing.

Ms. Caruso denied the application due to the inability to make the findings.

Ms. Caruso 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 3:35 p.m.

Minutes approved by:



Gerri Caruso, Principal Planner

799 NISQUALLY DR.

EXISTING SHED
ON FENCE

EXISTING ACCESSORY
STRUCTURE
"A"

PROPOSED POSTS
ARE 10' HIGH
"B"

795 NISQUALLY DR.

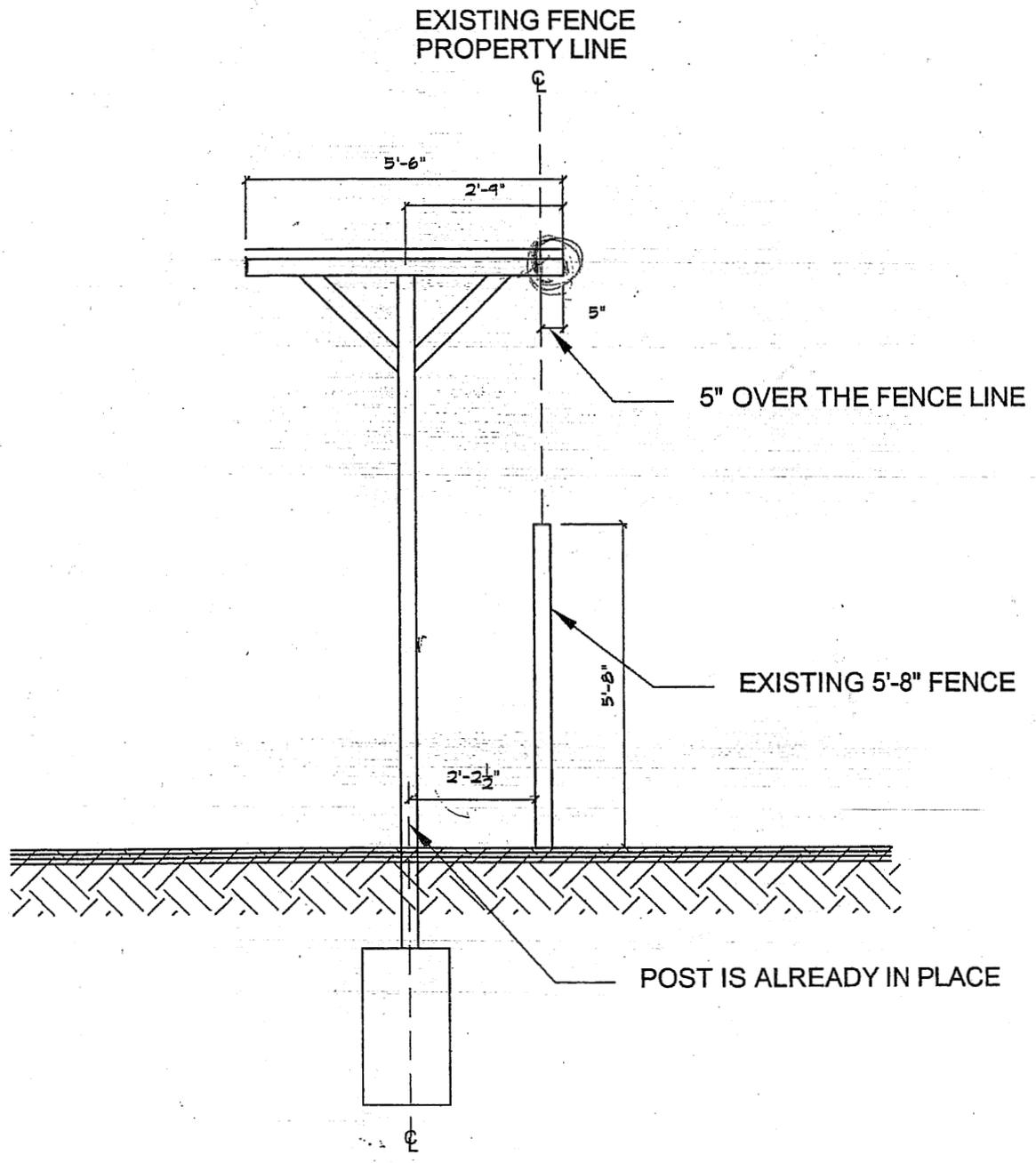


NISQUALLY DRIVE

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MAR 31

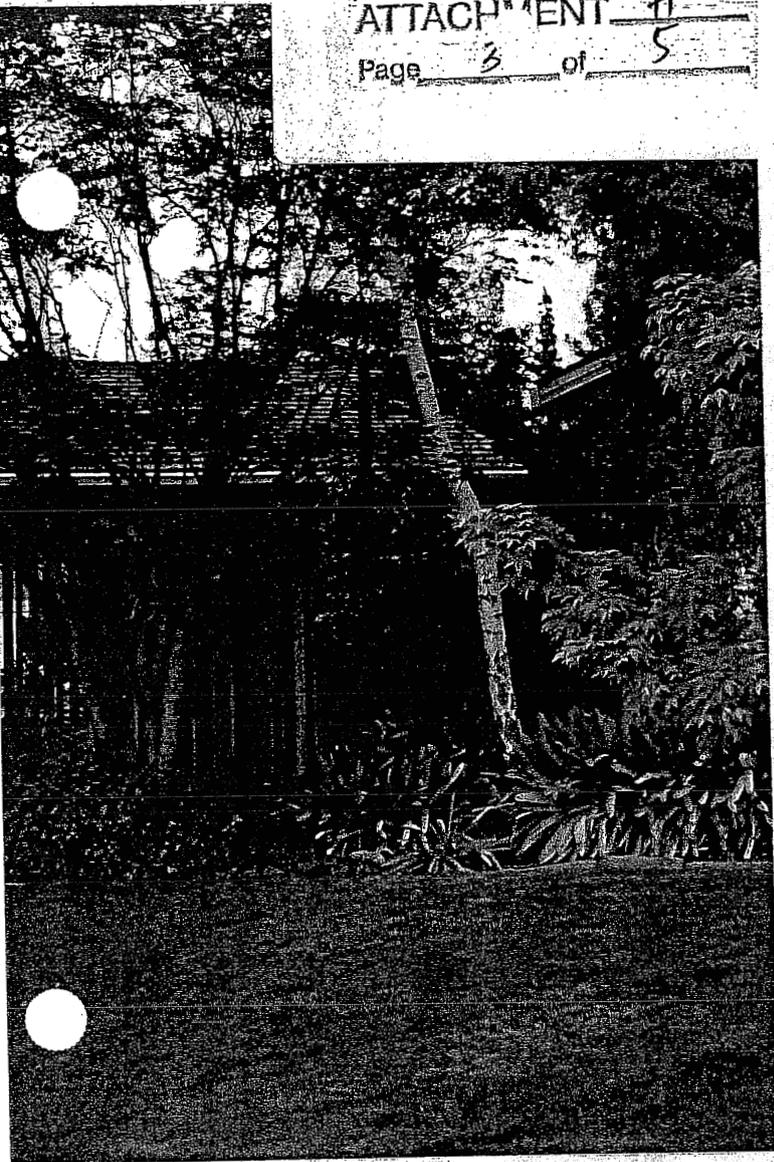
PLANNING DIVISION



NOTE:

STRUCTURE "B" IS TO BE 5'-6" AT THE END OF ROOF STRUCTURE. THIS WOULD MAKE THE ROOF GO OVER PROPERTY LINE BY 5 INCHES. SETBACK IS NEGATIVE 5 INCHES, EVEN THE 2'-6" THAT IS REPORTED IN THE STAFF REPORT.

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PICTURE 1- VIEW FROM THE STREET, SHOWING EXISTING POSTS INSTALLED PRIOR TO MY COMPLAINT. NOTICE CLOSE PROXIMITY TO MY HOME, AND HIGH VISIBILITY FROM STREET.



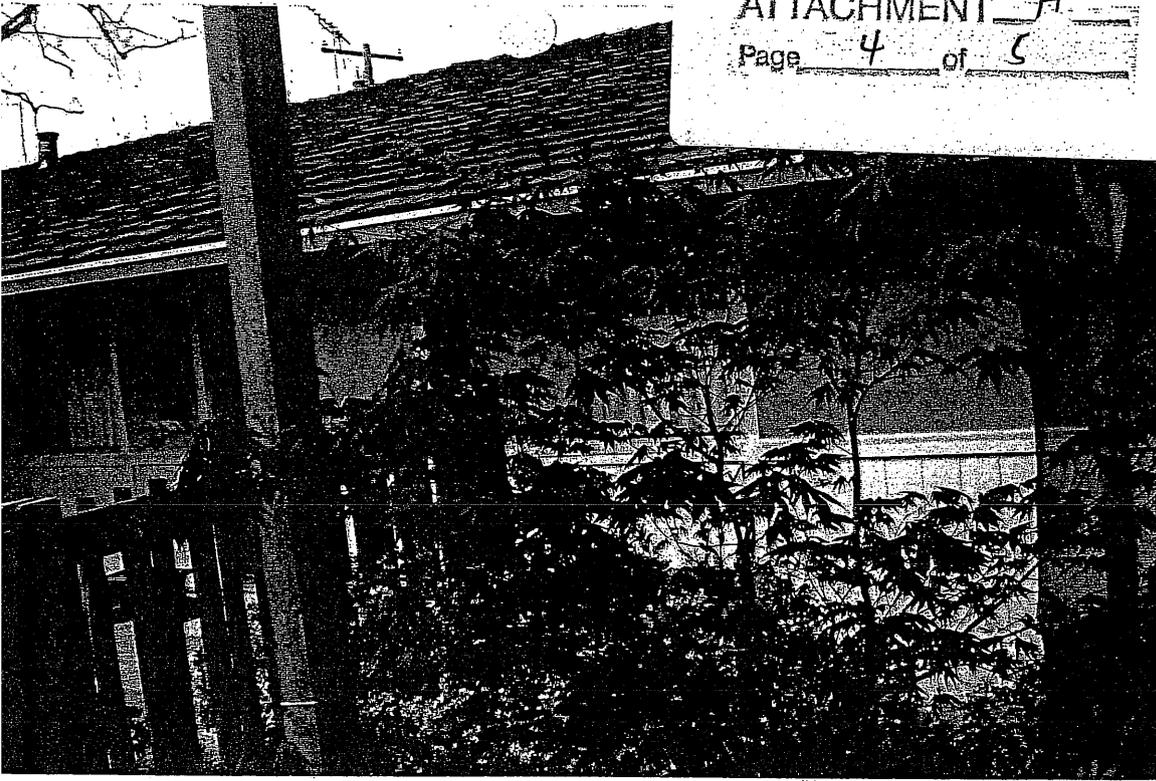
PICTURE 2-
POSTS ARE HIGHER THAN BOTH OF OUR HOMES EAVE ELEVATIONS. NOTE UNSURELY BLUE SHADE CLOTH ON STRUCTURE "A"

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PICTURE 3- How
CAN THE MAPLE GROW
ABOVE RHODODENDRON
WHEN THE STRUCTURE
WILL BE IN THE
WAY OF THIS TO
NATURALLY HAPPEN?



PICTURE 4- THE
CENTER POST FOR
STRUCTURE "B" IS
ALREADY SET IN
CONCRETE VERY
CLOSE TO THE FENCE
PROPERTY LINE.



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PICTURE 5-

SHOWS THAT THE CENTER POST IS ACTUALLY 2'-2 1/2" TO CENTER OFF OF FENCE. NOTE TEMPORARY BRACES TO HOLD POST WHILE CONCRETE SET UP.



PICTURE 6-

THIS SHOWS STRUCTURE "A" ALREADY EXISTING IN THE BACKGROUND. STRUCTURE "B" POSTS EXISTING AND THE OVERALL SIZE OF THE RHODODENDRON BETWEEN THE POSTS,

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My name is Bernice Petersen. I have resided at my address at 795 Nisqually Drive in Sunnyvale since 1960. I recently had to remove a tree from my front yard because it kept sending up hundreds of suckers and at my age, 84, I could no longer cope with the problem. I replaced it with a Japanese maple tree "Bloodgood", of which I already have a mature specimen in my yard. Unfortunately the new maple is not yet large enough to provide the shade protection that a couple thirty-five year old rhododendrons require. One was badly burned by the sudden intense sunlight and I quickly had it protected with a temporary screen, which succeeded in saving the plant. The other rhododendron also suffers from too much exposure, and I was in the process of building a temporary shelter for it, when my next door neighbor^b intervened.

Her husband is employed by Fry's Company to solve litigation problems for the chain, and he filed a complaint with the city of Sunnyvale. I attended a hearing to present my appeal for two short-term shade structures to save the shrubs until the tree itself can provide the shade they require. The majority voted against my appeal, claiming they feared setting a precedent.

My house is on a pie-shaped lot, so it is set back farther from the street than my neighbors' houses. Also my front yard was designed and constructed according to a plan that screens a courtyard and a planting bed from the street. It is in this private area that the two temporary shelters are needed. I am very proud of the landscape^{plan} of Mr. William Yamamoto and would never do anything to detract from it permanently. I only ask for two small shelters to save two beautiful rhododendron plants until the new Japanese maple tree can give them the same protection as the tree I was forced to remove. I shall be delighted to remove the shelters and restore my yard to its original design. I believe my front yard is not only a joy to me, but an asset to the neighborhood^b and to the city of Sunnyvale.

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PLANNING COMMISSION MINUTES OF JUNE 9, 2008

2008-0183: Appeal of a decision of the Administrative Hearing Officer to deny an application for related proposals located at **795 Nisqually Drive** (near Lewiston Drive) in an R-1 (Low Density Residential) Zoning District. (APN: 323-23-006) NC;

- **Use Permit** to allow two accessory utility buildings to be located between **the face of the house and public street**;
- **Variance** to allow a side yard setback of 1' and zero lot line where a 6' minimum is required.

Noren Caliva, Assistant Planner, presented the staff report. She said staff recommends that the Planning Commission deny the appeal and uphold the decision of the Administrative Hearing Officer and deny the Use Permit, and deny the Variance.

Comm. Babcock asked staff if the structure that is in place now that she saw on her site visit is the proposed structure with the exception that the wood slats would replace the green mesh material. Ms. Caliva said yes and one of the poles has already been installed and still needs to be cut down to the proposed height. Comm. Babcock asked if there is the option of approving a temporary Variance. Ms. Caliva said yes and if the appeal is approved that staff is recommending the Variance only with the Use Permit be valid for five years. **Trudi Ryan**, Planning Officer, clarified that technically the Use Permit would only be good for five years, and the Variance is good only with the Use Permit.

Comm. Klein asked about a spray-on product listed as an option to protect the rhododendrons instead of the proposed shade structure. Ms. Ryan said normally this kind of product requires multiple applications.

Comm. Hungerford confirmed with staff the location of the two rhododendrons that are requiring the shading.

Chair Sulser opened the public hearing.

Bernice Peterson, applicant, gave background information regarding the landscaping in her yard. She said in 1967 she and her husband attended a Garden Show and were impressed with the landscape plans by William Yamamoto resulting in hiring him to prepare a design for their yard. She said her husband took the plans and did all the work to complete their front yard. She explained the different trees and some problems they had with one of the trees.

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She said she had to remove a tree last year and her rhododendrons are now exposed and they are shade preferring plants that require special conditions. She said the leaves began to blacken so she began to have a temporary structure built, until her neighbor intervened. She explained the temporary structure will come down when her replacement tree grows large enough to shade the rhododendrons. She said the temporary shade is not obtrusive. She said the substitute alternatives suggested by staff are inappropriate and time is all that is needed to allow the shade from the new tree planted to be adequate. She said she hopes the City of Sunnyvale will approve her application and appeal to help her preserve these treasures. Ms. Peterson showed and described several pictures of the site from many different angles.

Chair Sulser asked Ms. Peterson if she could comment about the spray-on product suggested as an option. Ms. Peterson said the spray-on would help protect the plants and these are shade-loving plants that need more protection as they will not tolerate the sun.

Kevin Robins, a Sunnyvale resident and neighbor, said he is opposed to the structure. He discussed the current condition of the landscaping including other trees and posts that have been installed. He said the fence is 5' 8" and the proposed structure is 10' high. He said the proposed structure would obstruct his view and showed and discussed a picture of the site in question.

Vice Chair Rowe asked Mr. Robins about these structures and said the applicant said they would not be seen from his home due to a hedge. Mr. Robins said that he would be able to see the structure as the hedge is further down the fence line. He said they have sheer drapes, would be able to see the structure and confirmed to Vice Chair Rowe that the structures would be 2'6" to 4' higher than the existing fence.

Chair Sulser closed the public hearing.

Comm. Babcock moved for Alternative 2 to grant the appeal and approve the Use Permit and Variance with the recommended conditions of approval, and that be the structure be allowed for the maximum of five years. The motion died for lack of a second.

Vice Chair Rowe moved for Alternative 1 to deny the appeal and uphold the decision of the Administrative Hearing Officer and deny the Use Permit, and deny the Variance. **Comm. Klein** seconded the motion.

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Vice Chair Rowe said she would like to acquiesce to the homeowner and that it does create problems as the applicant will see the beauty in the yard and the neighbor will see the structure. She said there are alternative measures that can be taken.

Comm. Klein said he would be supporting the motion as there are alternatives to the structure. He said he was not able to make the findings. He said the biggest issue for him is the size of the intended structures. He said he understands the applicant's issues and as far as setting precedence, placing a term limit on Variances is not the direction he would like the City to take.

Comm. Babcock said she would not be supporting the motion. She said recently they were discussing what exactly a structure is. She said she agrees that there are alternatives to the structure and she thinks those alternatives are uglier than the proposed structure. She said she does not know why the neighbor would prefer to look at a dead plant and a wall than this structure. She said she thinks a temporary Use Permit is in order.

Comm. Simons said he would be supporting the motion although he agrees with most of what Comm. Babcock said. He said the City does not distinguish between structures and suggested that the staff consider studying this in the future. He said he sees the merit in distinguishing the types or structures, i.e. arbors, sheds, etc.

Chair Sulser said he would be supporting the motion. He applauded the applicant for the effort she has put into her yard. He said the Planning Commission recently turned down an arbor and he does not feel like he can approve this.

ACTION: Vice Chair Rowe made a motion on 2008-0183 to deny the appeal and uphold the decision of the Administrative Hearing Officer to deny the Use Permit, and deny the Variance. Comm. Klein seconded. Motion carried, 6-1, with Comm. Babcock dissenting.

APPEAL OPTIONS: This action is final unless appealed to the City Council no later than June 24, 2008.

Ms. Ryan said that staff is currently looking at the accessory utility building regulations and one of the directions staff is going is to take the landscape features out of the regulations and develop separate criteria for those. She said she does not know if it would have impacted this application.