

**Council Meeting: February 23, 2010****SUBJECT: 2009-0753: Appeal by the applicant of the conditions imposed by the Planning Commission in approving a Use Permit for a fence in the front yard at 805 Devonshire Way****REPORT IN BRIEF****Existing Site Conditions** Single-family home**Surrounding Land Uses**

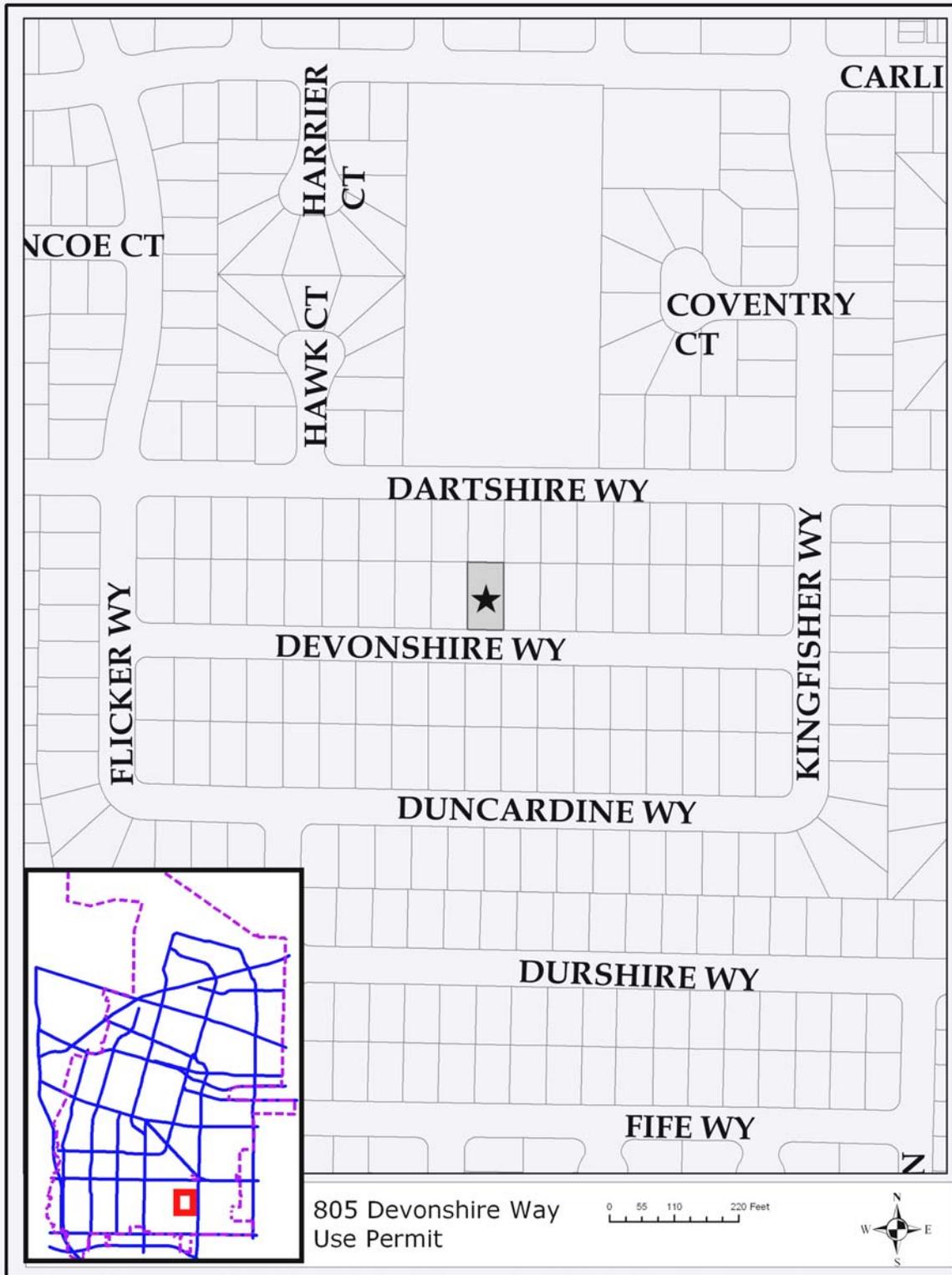
North Single-family home

South Single-family home (across Devonshire Way)

East Single-family home

West Single-family home

Issues Neighborhood Compatibility (Height, Location)**Environmental Status** A Class 3 Categorical Exemption relieves this project from California Environmental Quality Act provisions and City Guidelines.**Administrative Hearing Officer Action** Approved the Use Permit with conditions modifying the project to match the height and location options previously provided by the Planning Commission for Miscellaneous Plan Permit #2009-0156.**Planning Commission Action on Appeal** Denied the appeal and approved the Use Permit with the conditions imposed by the Administrative Hearing Officer (matching the height and location options previously provided by the Planning Commission for Miscellaneous Plan Permit #2009-0156).**Staff Recommendation** Deny the appeal and uphold the decision of the Planning Commission.



PROJECT DATA TABLE

Existing Conditions:	Single-family residence	Existing Fence Setback:	6' (unpermitted)
Zoning District:	R-0	Proposed Fence Height:	7'1"
Existing Fence Height:	6'10" (unpermitted)	Proposed Fence Setback:	6'

BACKGROUND

In March of 2009 the applicant submitted a Miscellaneous Plan Permit application to allow a 6-foot 10-inch tall fence in the front yard (#2009-0156). Prior to receiving a decision, the applicant constructed the fence according to the submitted plans. Staff approved the MPP with conditions requiring modification to the height or location of the fence. Two options were provided: leave the fence in its current location and reduce the height to 4 feet 6 inches; or relocate the fence to extend no more than 2 feet beyond the garage face.

The applicant appealed this decision, and the appeal was considered by the Planning Commission on June 8, 2009. The Planning Commission denied the appeal but provided the applicant with a third option for height and location of the fence in addition to those provided by staff: to reduce the fence’s height to 6 feet 5 inches and locate it 11 feet back from the front property line matching a previously approved fence at 814 Devonshire Way (see Attachment G – Planning Commission Minutes). To date, the applicant has not complied with the Planning’s Commission’s previous decision requiring modification of the fence.

In September of 2009, the applicant submitted a Use Permit application proposing to increase the height of the fence to 7 feet 1 inch (an addition of 3 inches) while maintaining the fence in its current location. At the time of the application, fences over 7 feet in height in the front yard required a Use Permit rather than an MPP. (A Use Permit is now required for fences over 6 feet in the front yard.) The Sunnyvale Municipal Code presently does not prevent an applicant from submitting a similar new application for processing.

DISCUSSION

Fence Design: The proposed fence would be set back approximately 6 feet from the front property line with a total height of 7 feet 1 inch measured from the top of curb. The proposed fence would use the same materials and design as the existing fence. The applicant states that the existing height does not provide sufficient privacy for his front windows. He also states he does not wish to relocate the fence closer to the home because of a planned addition to the front of the home in the future (see Attachment D – Applicant’s Letters).

Landscaping: Devonshire Way has a 5-foot landscaped park strip between the sidewalk and the street. A street tree is located in this park strip in front of the subject property. Front property lines along Devonshire Way are located approximately 6 inches behind the back of the sidewalk. The existing fence is located approximately 6 feet from the front property line and approximately 8 feet from the driveway. These setback areas are landscaped with a combination of gravel and planter boxes. There is also a landscaping cut-out in the fence along the southwest corner of the property adjacent to 795 Devonshire. A tree has been planted in this cut-out area. (See Attachment F – Site Photographs.) The applicant does not propose any modification to this landscaping.

Typical Fence Heights in the Neighborhood: The surrounding neighborhood is characterized by Eichler homes, many of which have front masonry walls original to the construction of the homes. The original Eichler walls are about 7 feet tall. Some are topped with decorative trellis elements resulting in a total height over 7 feet. The original Eichler walls are located in line with the front face of the garage, leaving a consistent pattern of open front yards from the home to the sidewalk. Fences and walls have been added to the front yards of some homes in the neighborhood.

Neighborhood Compatibility/Expected Impact: Staff finds the proposed fence is not compatible with the surrounding neighborhood. Its location close to the front property line combined with its height create a walled-in appearance that stands in contrast to the prevailing pattern of open front yards throughout the neighborhood. As a result, the proposed design has the potential to have a detrimental visual impact on the streetscape. In the neighborhood there are a few homes which have fences or walls 6 feet or greater in height located in the front yard (beyond the front face of the garage). These fences predate the current guidelines and/or are not permitted.

Compliance with Development Standards/Guidelines: The City adopted Design Guidelines for Eichler homes in July of 2009. These guidelines were not in place at the time of the original MPP application (#2009-0156), but were in effect when the subject Use Permit application was submitted. The Eichler Design Guidelines recommend using a simple and modern design for fences on properties with Eichler homes, preferably with a strong horizontal or vertical emphasis (Guideline 3.5.4). The design of the subject fence is attractive and has a strong vertical emphasis as recommended in the Eichler Design Guidelines. However, the Eichler Design Guidelines also recommend that fences which are 6 feet tall or more be located at a setback of at least 15 feet from the front property line. Where front fences are part of the original architecture, the guidelines recommend maintaining those front fences (which are typically located at the face of the garage). The proposed fence is inconsistent with the original Eichler walls in the neighborhood due to its

location close to the front property line, and therefore is not consistent with the Eichler Design Guidelines.

Administrative Hearing Action: An Administrative public hearing was held on November 25, 2009. The applicant stated that he applied for the subject Use Permit because the action of the Planning Commission on his previous project does not allow him to meet the project goals, including creating a space for a front addition to the home. Four members of the public spoke at the hearing; one of them opposed the project. The Hearing Officer approved the Use Permit with conditions modifying the project to match the options previously provided by the Planning Commission for MPP #2009-0156. The minutes of the Administrative Hearing are provided in Attachment H.

Applicant's Appeal of Administrative Hearing Action: On December 9, 2009, the applicant filed an appeal of the decision of the Administrative Hearing Officer (see Attachment D – Applicant's Letters). The appellant stated that the conditions imposed by the Hearing Officer do not show consideration for his project goals, which include an addition to the front of the home. He therefore requested an alternative solution be provided.

Staff Comment: The appellant has many stated project goals including making an addition to the front of the home to increase its living area, maintaining the pool in the rear yard, and maintaining the size of the front courtyard. It may not be possible to satisfy all of these goals while keeping the exterior appearance of the home consistent with the neighborhood and with City guidelines.

Planning Commission Action: On January 11, 2010, the appeal was considered by the Planning Commission at a public hearing. The appellant stated that the fence is a benefit to his property and the neighborhood. He also stated that there are other Eichler properties with tall fences and asked that City guidelines be applied consistently. Three members of the public spoke at the hearing; two in support of the project and one in opposition. The Planning Commission denied the appeal and upheld the decision of the Administrative Hearing Officer (see Attachment I – Planning Commission Minutes).

Applicant's Appeal of Planning Commission Action: On January 15, 2010, the applicant filed an appeal of the decision of the Planning Commission (see Attachment D – Applicant's Letters). The appellant states that the reason his fence is not in conformance with City guidelines is because the Eichler Design Guidelines were not yet adopted when the MPP for the fence was submitted.

Staff Comment: Staff did not apply the Eichler Design Guidelines to the original MPP application because, as the appellant notes, they had not

yet been adopted at that time. Instead, staff found the fence was not in compliance with the Single Family Home Design Techniques, which were in effect at the time. The appellant received a final decision on the MPP application (Planning Commission appeal hearing on June 8, 2009), which was based on the Single-Family Home Design Techniques and previous City Council actions related to front fences. The current application is a new proposal for a taller fence, and this application was filed after adoption of the Eichler Design Guidelines. The Planning Commission's action in January of 2010 was to support their previous June 2009 decision by providing three options for the fence (with various combinations of height and setback). The Eichler Design Guidelines are more restrictive than the Planning Commission's action, as they call for a minimum of a 15-foot setback for any fence greater than 6 feet in height.

ENVIRONMENTAL REVIEW

A Class 3 Categorical Exemption relieves this project from California Environmental Quality Act provisions and City Guidelines. Class 3 Categorical Exemptions include accessory structures such as fences and sheds.

FISCAL IMPACT

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

PUBLIC CONTACT

Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall, at the Sunnyvale Senior Center, Community Center and Department of Public Safety; and by making the agenda and report available at the Sunnyvale Public Library, the Office of the City Clerk and on the City's Web site.

Notice of the Administrative Hearing was also published in the Sun newspaper and mailed to nine adjacent property owners, residents, and interested parties. Notice of the Planning Commission appeal was mailed to nine adjacent property owners, residents, and interested parties. Prior to the Administrative Hearing, staff received two letters regarding the proposal. Two additional letters from neighbors were presented by the applicant at the Administrative Hearing (see Attachment E – Public Comments). Staff has not been contacted by any members of the public regarding the appeals.

ALTERNATIVES

1. Deny the appeal and approve the Use Permit with the conditions imposed by the Administrative Hearing Officer and Planning Commission (Attachment B)
2. Grant the appeal and approve the Use Permit with modified conditions.
3. Deny the Use Permit.

RECOMMENDATION

Staff recommends Alternative 1 to the City Council.

Reviewed by:

Hanson Hom, Director, Community Development Department
Reviewed by: Trudi Ryan, Planning Officer
Prepared by: Mariya Hodge, Associate Planner

Approved by:

Gary M. Luebbbers
City Manager

Attachments

- A. Recommended Findings
- B. Standard Requirements and Recommended Conditions of Approval
- C. Site and Architectural Plans
- D. Applicant's Justification Letters and Appeal Letters
- E. Public Comments
- F. Site Photographs
- G. Minutes of the previous Planning Commission Hearing for MPP #2009-0156 on June 8, 2009
- H. Minutes of the Administrative Hearing on November 25, 2009
- I. Minutes of the Planning Commission Hearing on January 11, 2010

Recommended Findings - Use Permit

Goals and Policies that relate to this project are:

Land Use and Transportation Element – *Policy N.1.4. Preserve and enhance the high quality character of residential neighborhoods.*

Eichler Design Guidelines – *3.5.4. Integrate fencing with the house style.*

- a) *Fences that are 6 feet or more in height are required to be set back a minimum of 15 feet from the front property line.*
 - b) *The design of fences should be simple and modern in appearance. A fence with a strong vertical or horizontal emphasis, as is common in Japanese garden design, is a common approach that works well with the Eichler style... In some models, fences are part of the original architecture, and necessary to protect front yard privacy. These fences should be maintained or replaced, as necessary...*
1. The proposed use attains the objectives and purposes of the General Plan of the City of Sunnyvale.

Staff was not able to make the finding above. The design of the fence is attractive and has a strong vertical emphasis as recommended in the Eichler Design Guidelines. However, the fence is located too close to the front property line. Where front fences are part of the original architecture, the guidelines recommend maintaining those front fences (which are typically located at the face of the garage). The proposed fence is inconsistent with the original Eichler fences in the neighborhood due to its location close to the front property line, and therefore is not consistent with the Eichler Design Guidelines. Staff would be able to make the finding above for a modified project with reduced fence height and increased setback. With the previous action of the Planning Commission (MPP #2009-0156), the applicant was provided with three options for fence heights and locations, including an option to locate a 6-foot 10-inch fence two feet in front of the garage face. The Administrative Hearing Officer and Planning Commission imposed the same conditions in approving the subject Use Permit. Staff recommends denial of the appeal, and approval of the Use Permit subject to the conditions imposed by the Administrative Hearing Officer and the Planning Commission (Attachment B).

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 the orderly development of, or the existing uses being made of, adjacent properties.

Due to the height and location of the fence, the proposed project has the potential to create a walled-in appearance in the front yard which is not consistent with the prevailing pattern of open front yards in the neighborhood. Staff was not able to make the finding above, as the proposed design could have a detrimental visual impact on the streetscape. Staff would be able to make the finding above for a modified project with reduced fence height and increased setback, which would reduce the fence's visual impacts. Staff recommends denial of the appeal, and approval of the Use Permit subject to the conditions imposed by the Administrative Hearing Officer and the Planning Commission, which give three options for modifying the fence's height and location (Attachment B).

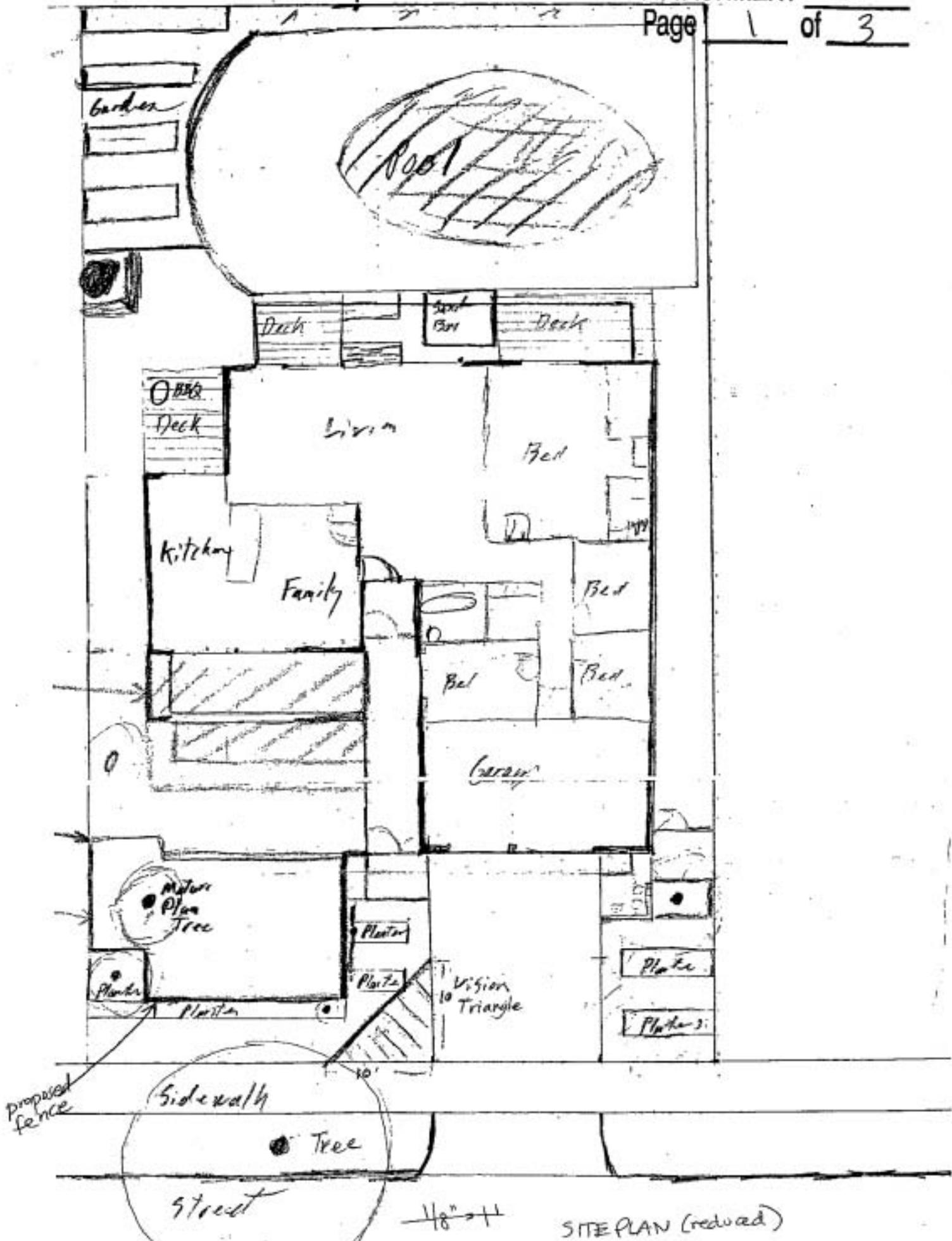
Standard Requirements - Use Permit

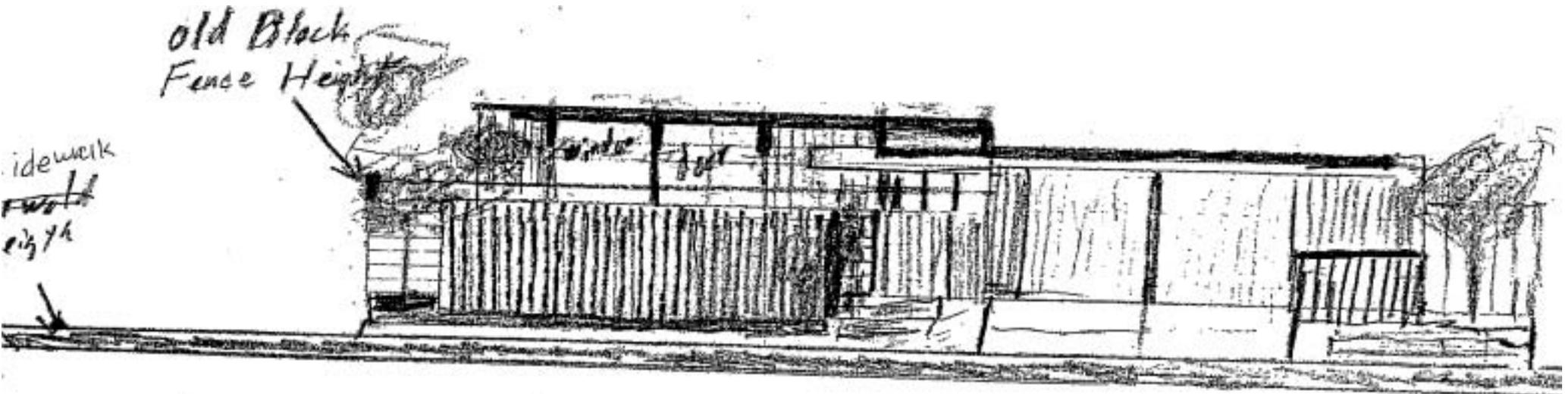
The following is a list of standard requirements. This list is intended to assist the public in understanding basic related requirements, and is not intended as an exhaustive list. These requirements cannot be waived, modified, or appealed.

- A. **Permit Expiration:** The Use Permit for the use shall expire if the use is discontinued for a period of one year or more.
- B. **Permit Lapse If Not Exercised (Ordinance 2895-09):** The Use Permit shall be valid for three (3) years from the date of approval by the final review authority (as adopted by City Council on April 21, 2009, RTC 09-094). Extensions of time may be considered, for a maximum of two one year extensions, if applied for and approved prior to the expiration of the permit approval. If the approval is not exercised within this time frame, the permit is null and void.
- C. **Building Permits:** Obtain Building Permits if the fence exceeds 6 feet in height as measured from the nearest adjoining grade or incorporates a retaining wall.

Recommended Conditions of Approval - Use Permit

- 1. **Modifications To Fence:** The fence shall be modified to comply with one of the following three options (*matching the three options previously provided by the Planning Commission for MPP #2009-0156*):
 - a. The fence shall be set back from the front property line so that it does not extend more than 2 feet beyond the face of the garage (approximately 19-foot setback required), and the fence shall not exceed 6 feet in height as measured from the grade (6 feet 10 inches as measured from the top of the nearest adjacent public curb);
 - b. The fence may remain in its current location at a 6-foot setback from the front property line, and the fence shall not exceed 4 feet 6 inches in height as measured from the top of the nearest adjacent public curb (approximately 3 feet 10 inches above grade);
 - c. The fence shall be set back 11 feet from the front property line, and the fence shall not exceed 6 feet 5 inches in height as measured from the top of the nearest adjacent public curb.
- 2. **Date When Modifications Must Be Made:** The required Building permits shall be obtained no later than 30 days after the final approval action. All required modifications to the fence shall be completed no later than 90 days after the final approval action.

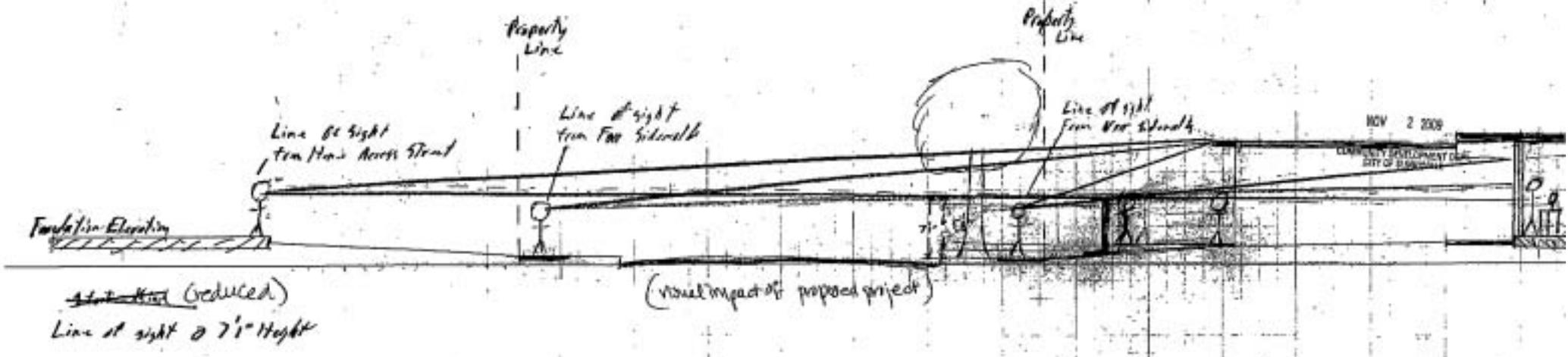
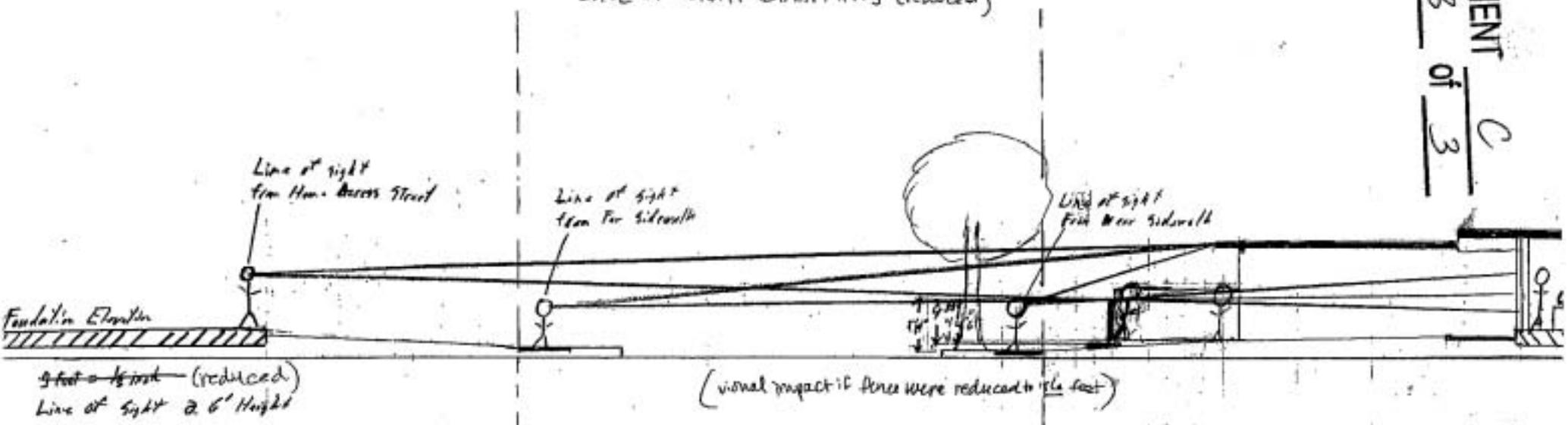




1/8" = 1'

FENCE ELEVATION (reduced)

LINE OF SIGHT DIAGRAMS (reduced)



September 28, 2009

City of Sunnyvale
Planning Department
456 W. Olive Ave.
Sunnyvale, CA 94086

Dear Planning Department,

In accordance with the Neighborhood Preservation letter Dated August 28th 2009 I am resubmitting a modified design of the fence. The original miscellaneous plan permit was submitted on March 23rd 2009 prior to Draft #2 and approval of the Eichler Design Guidelines on July 28th 2009. The plan submitted is in code and with the intent of the Eichler Design Guidelines approved by City Council on July 28th 2009:

- 1) Preserve the unique character of Eichler homes in the neighborhood
- 2) Assist property owners in designing new homes, expansion, and other exterior changes to respect and compliment the scale and character of existing Eichler homes and their surrounding neighborhoods.

The intent of the fence is to enable a proposed future addition to the kitchen and family room into the current courtyard and provide a safe play space for my children that is visible from the kitchen, family room, and entryway. It is our desire to provide additional living and play space while maintaining a usable courtyard consistent with the original Eichler courtyard design.

Annotated below are portions of the Eichler Guidelines, which were incorporated into the submitted design (Public Hearing Review Draft May 5th, 2009).

- 1) When additions must be placed at the front of the house, design the forms and details to appear as though they are part of the original house (page 13, section 3.2.1.b).
- 2) Proposed additions into courtyard (Draft #1 Page 15 section 3.2.1.b courtyard model). **There are no examples of additions for courtyard models in current draft.
- 3) Tall wall for entry garden (Draft #1 Page 15 section 3.2.1 courtyard model)
** There are no examples of additions for courtyard models in current draft.
- 4) Improvements or additions should appear to have been constructed with the original house (page 12 section 3.1.3.a).
- 5) Whenever possible mature trees and landscaping should be protected during construction and integrated into the new landscaping plans (page 12 section 3.1.6).
- 6) Integrate fencing with the house style (page 12 section 3.1.6).
- 7) The design of fences should be simple and modern in appearance. A fence with a strong vertical or horizontal emphasis, as is common in Japanese garden design, is a common approach that fits well the Eichler Style. Two examples are shown to the right. In some models, fences are part of the

original architecture, and are necessary to protect front yard privacy. These fences should be maintained or replaced, as necessary. In most cases simple wood fencing, without lattice is the appropriate design. Concrete block fencing is allowed where it is found in the subdivision (page 19 section 3.5.4.c).

- 8) Other Eichler design elements incorporated in submitted plan (additional resource Eichler Network).
- a. Interior/exterior plan relationship with large areas of glass in private yard areas.
 - b. Post and beam construction
 - c. Low roof plate heights
 - d. Horizontal design emphasis
 - e. Modern, geometric forms
 - f. Interior and entry atriums
 - g. Flat and low pitched roof slopes
 - h. Wide roof overhangs
 - i. Relatively solid wall from facade
 - j. Recessed home entries
 - k. Simple modern detailing
 - l. Exposed beams
 - in. Simply entryway incorporated into architectural features
 - n. Offsetting walls
 - o. Contrasting materials
 - p. Emphasis on indoor and outdoor space
 - q. Fence design compatible with the exterior facade of the home, and the transition from building to the fence should be intension and seamless.
 - r. Carry trim lines or other facades details from the house to the fence.
 - s. Use of vertical textures that eco the pattern of siding or long horizontal planes that carry the lines of the building wall outward.
 - t. The fence and its texture should expand the visual presence of the home.

The design submitted incorporates numerous Eichler design elements and should be reviewed and approved in accordance to Director Hom's statement to City Council on July 28th 2009, "there are number of guidelines and each case will be reviewed individually. There is no requirement that a certain number of guidelines be met...staff views these guidelines as a living document and guidelines will be adjusted..." (see minutes from July 28th, 2009 City Council meeting).

During the City Council meeting on July 28th 2009 Councilmember Swegles inquired of Director Hom if the guidelines could incorporate details for the three different styles. Director responded stating, "staff could identify the original records of the building permit plans for further reference for homeowners... that there are not really three distinct styles of Eichler homes, rather there are distinct features that differ slightly, such as roof lines and windows." In principle, there is predominately one "Eichler Style" which there were several different modes built in Sunnyvale incorporating numerous

common and distinct design elements. It is apparent that the development of the Eichler Design Guidelines removed/omitted design element and features that are distinct and integral to the "courtyard model." potentially imposing undue limitations for courtyard Eichler owners.

I have read and observed much of the public hearings regarding the adoption of the Eichler Design Guidelines and believe that the public concerns can be summarized into a few **categories**.

- 1) Does the property maintain the look and feel of an Eichler design?
- 2) Are there any safety code violations that would create an unsafe situation?
- 3) Will there be a reasonable expectation of privacy?

The plan submitted addresses these public concerns and should be approved.

The design options provided by staff for the original permit submitted stated unqualified "precedence" or height limitations essentially prohibiting a permit. Upon further staff research a third option was provided defined by yet another "precedence." These actions are contrary to SMC 19.82.020 (a) (1) "The permit shall be considered ministerially without discretionary review, when the applicant is compliant with the relevant standards, the permit shall be issued." I urge approval of the plan submitted based upon its individual merit and the considerable efforts taken to remain true to the Eichler design intent

Sincerely,

Bret Flesner and Loree Watanabe
805 Devonshire Way
Sunnyvale, CA 94087

November 2, 2009

Mariya Hodges
Associate Planner
City of Sunnyvale
Planning Department
456 W. Olive Ave.
Sunnyvale, CA 94086

NOV 2 2009

COMMUNITY DEVELOPMENT DEPT.
CITY OF SUNNYVALE

Dear Mariya Hodges,

Thank you for the site visit on October 22nd and hand delivering the request for additional information. Based upon our discussion I have rendered a new line of site drawing included are 2 elevations for the front wood section of the fence one at 7'1" and one at 5' 11" to curb. This additional drawing identified the height of the fence to the curb and to both grades (interior and exterior). The line of sight drawing clearly indicates the impact of the reduction in height from the original fence height of 11' 4" to 7'1" or 5'11".

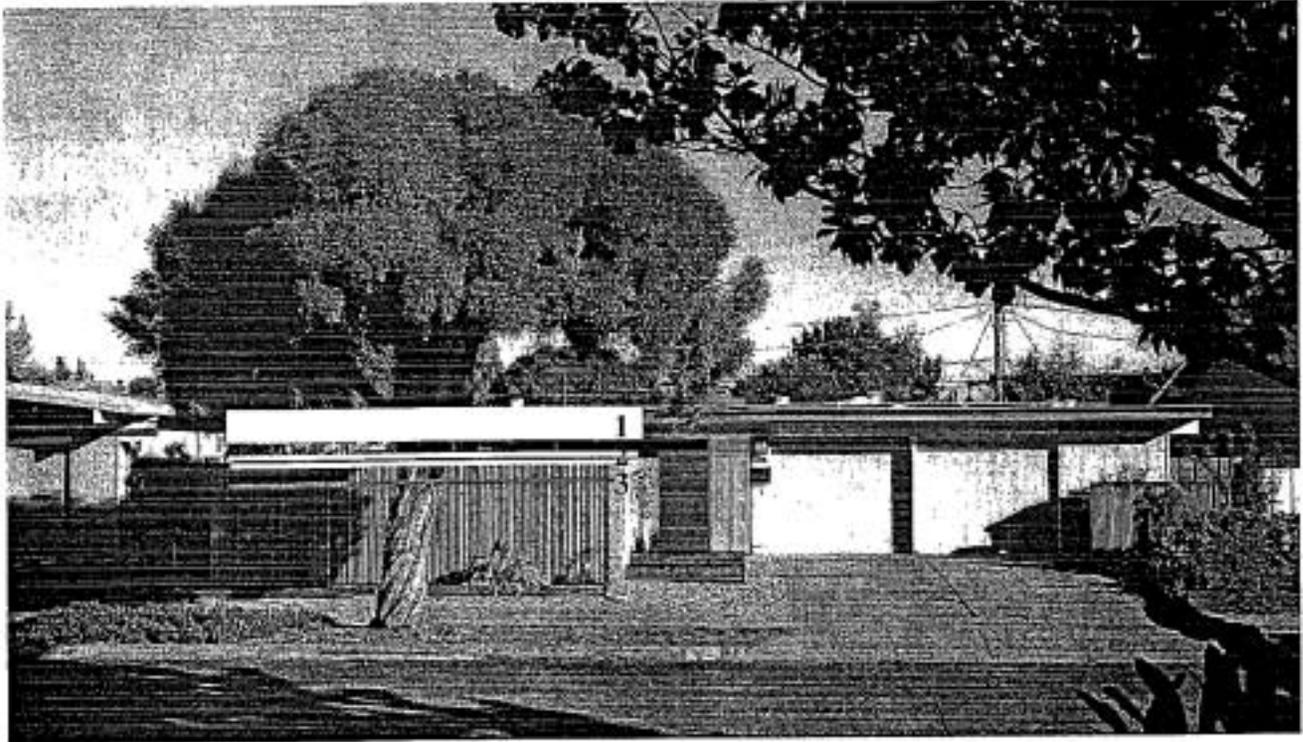
We had also discussed providing some additional information supporting the project purpose and to further illustrations of the Eichler design elements. This document articulates 11 project goals, provides a before and after pictorial example, and identifies 21 Eichler design elements incorporated in the fence design.

I believe that this plan supports the project goals and is a balanced approach to preserve the unique character of our Eichler home and neighborhood. I look forward to your feedback to further assist with the design in order to support the scale, character, and purpose of the project.

PROJECT GOALS:

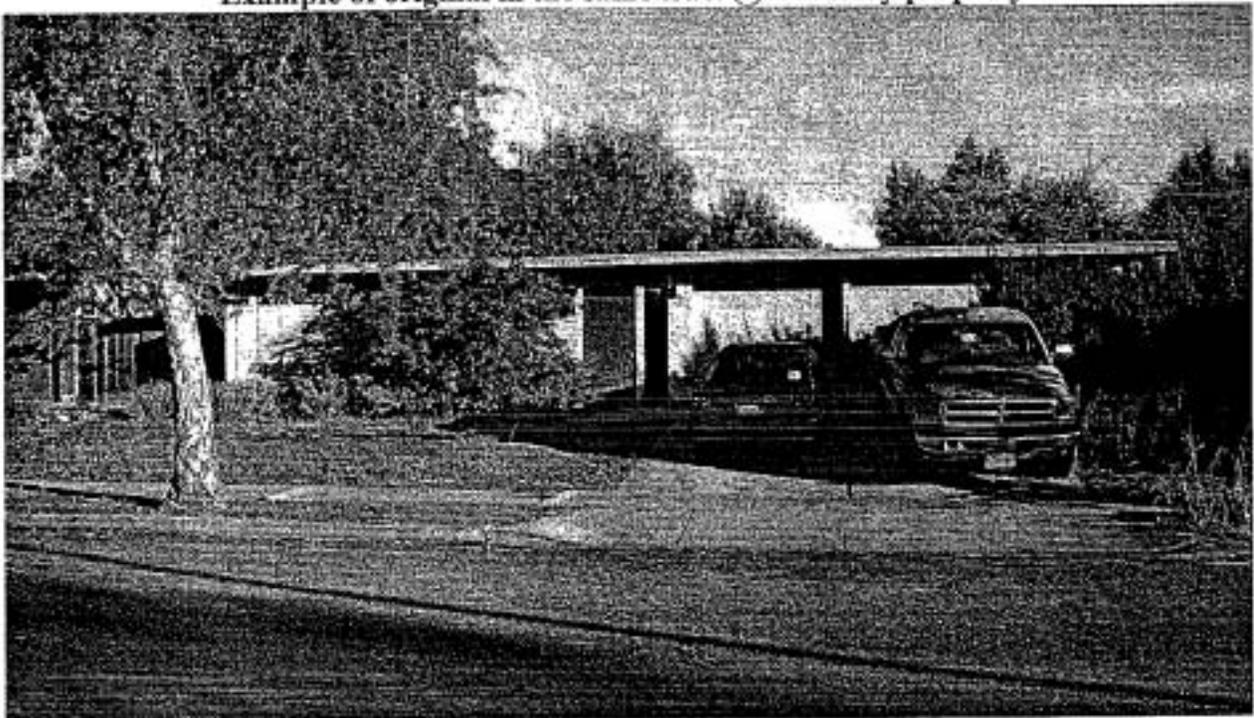
- 1) Enable a proposed future addition to the Kitchen and Family Room (see site layout).
- 2) Provide a safe play space for my children which is visible from the Kitchen and Family room.
- 3) Preserve the unique character of our Eichler home
- 4) Respect the scale and character of existing Eichler homes and the surrounding neighborhood.
- 5) Comply with all safety and SMC code requirements.
- 6) Use the Eichler Guidelines to assist in designing additions and other exterior changes to respect and compliment the neighborhood.
- 7) Use additional resource to further incorporate and enhance Eichler design elements (Eichler Network, Internet sites, Open house visits, etc.)
- 8) Build fence around mature Plum tree and accentuate our family value for home grown organic fruits and vegetables.
- 9) Maintain a reasonable level of privacy with respect to the interior home and the courtyard.
- 10) Maintain the Courtyard feature while enabling an expanded Kitchen and Family room.
- 11) Provide a more open and welcoming appearance to the original front façade.

Submittal Support
Fence Elevation Example



- 1) Original fence height identified in white @ 11' 4" to curb (4'4" higher than Eichler Guideline)
 - 2) Permit fence height requested not to exceed 7' 1" to curb identified by black line
 - 3) Red line @ 5' 11" Height (Recommended height from Eichler Guideline 3.5.4(b))
- **Refer to line of site drawing for more details

Example of original in the same tract @ a near by property

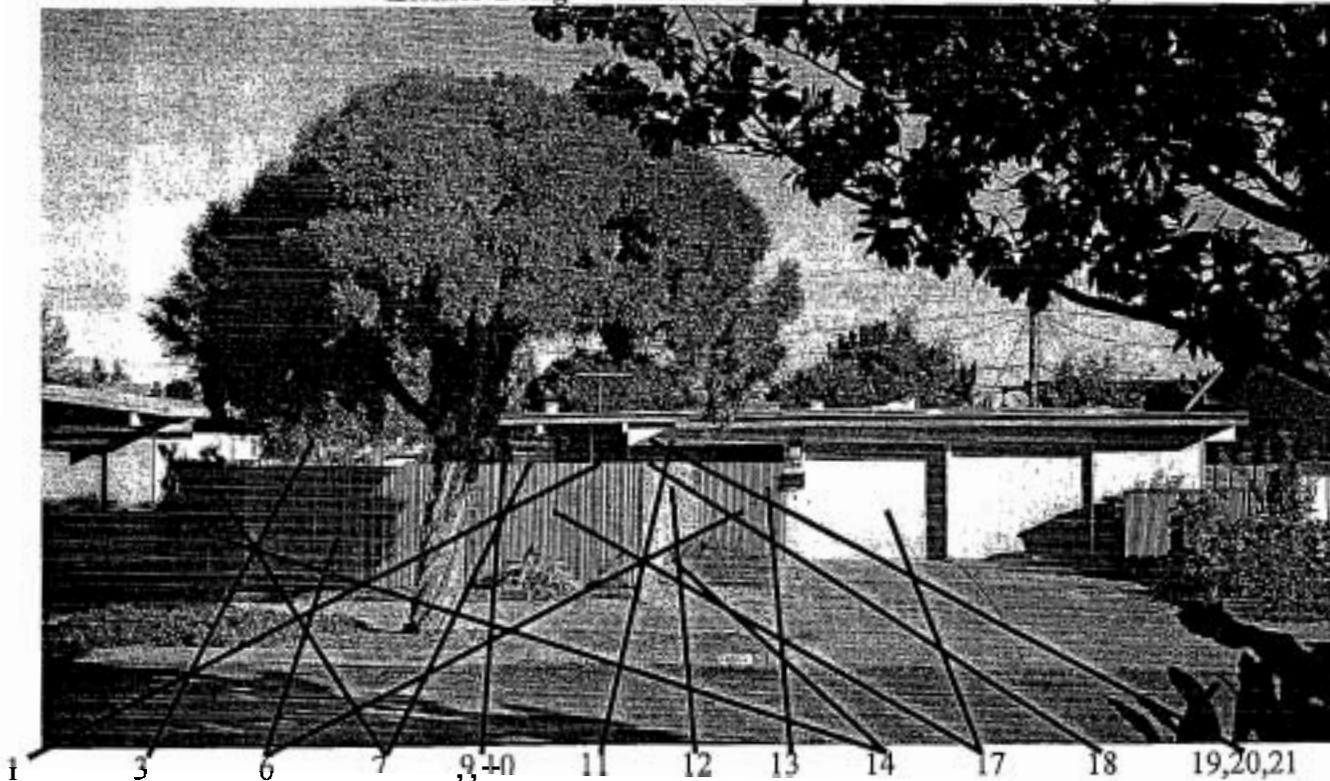


Submittal Support
Example of planned fence



In order for the submitted design to meet ALL of the Eichler Guidelines the front wood section of the fence would be further reduced to an approximate height of 5' 11" to the nearest curb (see fence elevation example). This would significantly further reduce the privacy to the interior of the house, impair the simple and modern appearance, reduce the Eichler Design Elements incorporated into the overall design, and exceed the intent of the Eichler Guidelines.

Eichler Design Elements Incorporated in Fence Design



**Picture take from across street @ entryway grade, eye height ((5'4") house grade approximately 4-6" higher)

Eichler Design Elements incorporated into fence:

- 1) Tall wall for entry garden
- 2) Improvements should have appeared to have been constructed with the original house
- 3) Mature trees (mature plum tree 15' from property line) and landscaping should be incorporated into new
- 4) Integrate fencing with the house style
- 5) Design is simple and modern in appearance
- 6) Strong vertical lines
- 7) Horizontal emphasis
- 8) Protects front yard privacy
- 9) Provides privacy to home's interior (Kitchen and Family room)
- 10) Interior and exterior plan relationship with large area of glass in private yard
- 11) Emphasis on post and beam construction
- 12) Relatively solid wall and facade
- 13) Simple entryway incorporated into architectural feature
- 14) Offsetting walls
- 15) Contrasting materials (concrete block, redwood fence, granite gravel, integrated redwood planter boxes,)
- 16) Emphasis on indoor and outdoor space
- 17) Fence compatible with exterior facade of house (1x2 vertical slating)
- 18) Transition to fence from house is seamless
- 19) Carry trim lines or other facade details from fence to house
- 20) Use of horizontal planes that carry the line of the building wall outward
- 21) Fence texture expands the visual presence of the home

Thank you for your consideration.

Bret Flesner and Loree Watanabe
805 Devonshire Way
Sunnyvale, CA 94087

November 23, 2009

Mariya Hodges
Associate Planner
City of Sunnyvale
Planning Department
456 W. Olive Ave.
Sunnyvale, CA 94086

RECEIVED

NOV 24 2009

PLANNING DIVISION

Dear Mariya,

I have reviewed the report issued on November 20th and would like to add the following observations for consideration at the administrative hearing on November 25th and for inclusion in the public record. I would appreciate your assistance to provide clarification for these observations.

- 1) Project #2009-0753 is compliant with the planning commission's decision rendered on July 28th 2009 as interpreted and enforced by the Neighborhood Preservation Committee. In the compliance letter dated October 27th 2009, 3 options were presented. As discussed at the time of submission, option 3 was chosen to resubmit modified plans of the fence. To this extent, this use permit is in compliance with the Planning Commission's decision.
- 2) The fence design included numerous Eichler Design Elements and is supporting the goals of the project (see attachment C). The approach is balanced and enables additional living space while maintaining the architectural integrity of the Eichler design and neighborhood. Please provide support as to how the Recommended Condition of Approval in Attachment A is supportive of the project goals.
- 3) A line of sight drawing was submitted with the revised plans to reaffirm the impact to the grade and the impact of the reduction from the original fence height of 11' 4." Please define and provide guidance as to an acceptable level of privacy.
- 4) I have asked staff to help identify options that are available to my property where I can add some additional living space to my home while maintaining a Courtyard feature. To this date staff has not been willing or able to provide options to support this end. The staff recommendation is imposing "original architecture" as predominate character of the neighborhood and establishing a standard that will not enable an addition to this property. This is in sharp contrast to documented intent of the Eichler Guidelines and similar properties in the neighborhood. The standards and recommendations utilized in this staff report appear to be more in line with Appendix A of the Eichler Guidelines for Heritage Resource District.
- 5) Staff Recommendation for Condition of Approval creates a threshold as "prevailing" and then applies an unachievable standard for any Eichler home with a Courtyard feature. Please note that less than 1/3rd of Eichler homes built in Sunnyvale include a Courtyard as a feature.
- 6) The phrase "walled-in" is used by staff as a critical standard to identify a "potential detrimental visual impact;" this standard is absent from the Eichler Guidelines and building code and should not be applied to this permit. In an effort to find options for this project I had conducted researched outside of the Sunnyvale Eichler guidelines and discovered that "walled in" appearance is not only common but prevalent in Eichler neighborhoods. In later models Joseph Eichler improved the earlier developments by incorporating curved streets to increase privacy and minimize uniformity and built integrated community centers to encourage a community atmosphere from what could

Administrative Hearing Support

easily have been interpreted as reclusive and impersonal developments. While in some ways the design is not as originally built but it is consisted to other modified properties in the development.

- 7) In the report, within the neighborhood compatibility portion, the phrase "prevailing pattern of open front yards throughout the neighborhood" appears. I had discussed this descriptive phrase with several of my immediate neighbors and it is their opinion this phrase does not appear to accurately describe our neighborhood. It was suggested that I take pictures to demonstrate the true prevailing character of Devonshire Way. I have included pictures looking down the sidewalk toward 805 Devonshire and would appreciate your help to identify the impact.

I am looking forward to the administrative hearing as mechanism to understand and provide a viable solution assisting with the desired expansion and other exterior changes of our Courtyard Eichler home.

Sincerely,

Bret Flesner and Loree Watanabe
805 Devonshire Way

Attachments:
Photos of Devonshire Way

North side of Devonshire Facing East

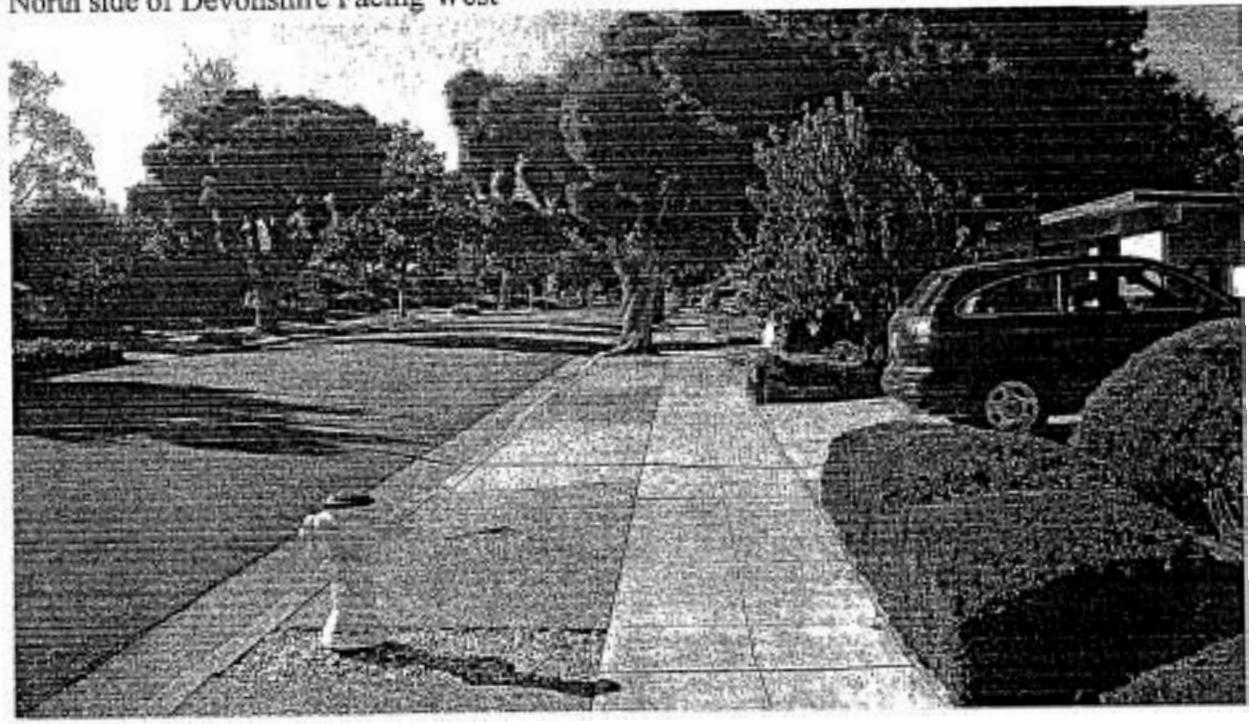


South side of Devonshire Facing East

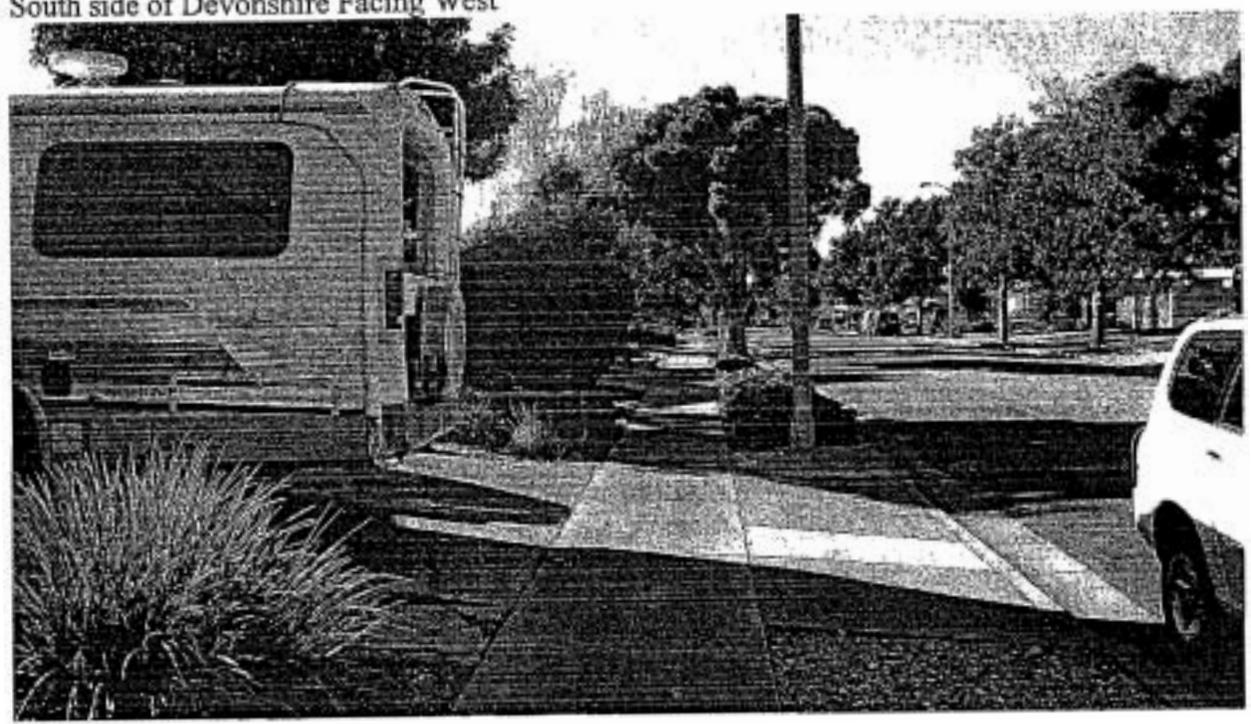


Administrative Hearing Support

North side of Devonshire Facing West



South side of Devonshire Facing West



December 9, 2009

Mariya Hodges
Associate Planner
City of Sunnyvale
Planning Department
456 W. Olive Ave.
Sunnyvale, CA 94086

RECEIVED

DEC 09 2009

PLANNING DIVISION

Dear Mariya,

Thank you for sending the minutes from the administrative hearing. I do appreciate your support and willingness start to move toward some common ground. Unfortunately, Andrew Minor the Hearing Officer did not feel that he had the authority to materially alter the condition for approval for this use permit. With the additional discovery and testimony provided for the hearing, it is reasonable to have some consideration in support of the project goals.

The project goals and unique challenges of my Courtyard Eichler are distinct and should be addressed as in a comprehensive manner based upon its individual merits. In order to achieve the project goals we wish to continue and move forward with the appeal.

I am looking forward to the Planning Commission hearing as mechanism to provide a viable solution assisting with the desired expansion and other exterior changes of our Courtyard Eichler home.

Sincerely,

Bret Flesner and Loree Watanabe
805 Devonshire Way

January 15, 2010

Mariya Hodges
Associate Planner
City of Sunnyvale
Planning Department
456 W. Olive Ave.
Sunnyvale, CA 94086

Dear Mariya,

I would like to express our desire to proceed with the next steps and appeal this project to the City Council. I believe that we are all aware of the unique aspects that have dominated this case for the last year and which would most likely require further guidance and direction.

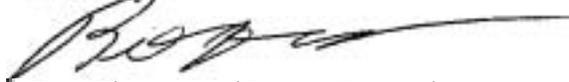
In an effort to summarize the situation, a strong Eichler design was developed and built in an Old Eichler Neighborhood. The neighborhood could be best described as older, overgrown, and significantly modified (over 80% of homes on Devonshire Way have exterior modifications which have impact the original Eichler architecture).

I believe that over the last year we have gained a common understanding that my home has strong visual presence embracing numerous Eichler design elements. There is strong evidence indicating a positive impact to the home value and is a step to reclaim a declining Eichler neighborhood. It is undeniable that the project embodies the character of an Eichler home and has a positive visual impact.

Unfortunately, the Sunnyvale Eichler Design Guidelines were in the initial draft phases when the project was initiated and did not include section 3.4.5 Integrate Fencing with the House. If this information would have been available or disclosed when planning staff was initially consulted or when the initial miscellaneous plan permit was submitted, desired changes could have been incorporated into the plan.

I have expressed a desire to staff to make some changes that could be minimize some of the visual presence and maintain the integrity of the project. It appears that the planning department is primarily concerned with precedence and the possible impact on the Eichler Design Guidelines. I would encourage a resolution that supports the project goals and is within our financial means.

Sincerely,



Bret Flesner and Loree Watanabe
805 Devonshire Way

RECEIVED

NOV 18 2009

PLANNING DIVISION

Dept of Community Development
436 West Olive Avenue
P.O.Box 3707
Sunnyvale, Ca.

Dear Ms. Hodge,

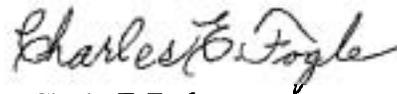
I am writing in response to our recent conversation about a use permit for a 7 foot tall fence in the front yard of the property located at 805 Devonshire Way. I live at 794 Devonshire Way which is almost directly across the street

I was surprised to learn that another use permit is to be considered on Wednesday November 26th. I was under the impression that this matter had been decided at a Planning Commission hearing in June. The ruling that was handed down was that the fence if left in the present location would have to be reduced to 4 foot or alternately if left at the present 6 foot height would have to be relocated at least 11 feet back from the sidewalk. It was stated that no appeal could be made. Now almost six months later no action has been taken on this ruling. Instead I received a public notice of a hearing on a second use permit for a fence 7 feet high. It is beyond belief that the City is even considering this.

Eichler uniformly set all the houses on this street back approximately 20 to 25 feet from the sidewalk. This provided a neat clean open appearance to the entire street. Now the resident at 805 builds this 6 feet fence out almost to the sidewalk. There is no front yard. If this fence is allowed to remain eventually others on the street will follow suit. You will end up with a cluttered, patchwork of homes and all the open appearance of the street will have disappeared.

The Sunnyvale city council just recently approved a set of guide lines for the preservation of Eichler home neighborhoods. This fence at 805 is definitely in violation of these guide lines. If the City should approve of this new use permit it will make a mockery of the Eichler Guide lines.

Sincerely,



Charles E. Fogle
794 Devonshire Way
Sunnyvale, Ca 94087
408-739-7829



November 19, 2009

RECEIVED

NOV 25 2009

City of Sunnyvale
Planning Department
456 W. Olive Ave
Sunnyvale, CA 94086

RE: Fence Permit 805 Devonshire Way, Sunnyvale, CA 94087

PLANNING DIVISION

Dear Planning Department,

I would like to offer a word of clarification and support for the fence permit and construction at the Eichler home of Bret Flesner and Loree Watanabe, 805 Devonshire Way, Sunnyvale, CA 94087.

My credentials come from having sold Eichler homes as a locally operating Realtor, having seen thousands of Eichler homes in Sunnyvale and throughout the Bay Area, and from being the current owner/operator of www.eichlerhomes.com where Eichler homeowners come to exchange information and follow the Bay Area Eichler marketplace.

- 1) The fence is consistent with Eichler design elements. It is a modern design with an emphasis on minimalism.
- 2) The fence is consistent with the neighborhood. In fact, a similar fence may be seen only a few doors away on the same street -- see attached photo.
- 3) The fence and construction adds value to the property and the neighboring homes. An investment of this nature, keeping a clean design with alternating materials and textures, shows care for their home. Current homeowners and potential buyers see this as a positive impact.

The spirit of the Eichler guidelines is to protect the integrity of each neighborhood and preserve each Eichler model for generations to come. As you review the fence permit and construction at 805 Devonshire Way you will find that this implementation is in complete alignment with these goals and embraces the spirit of modern and minimalism that make Eichlers so desirable.

Mark Easterday

408-887-1821
www.eichlerhomes.com
mark@themeshnetwork.com

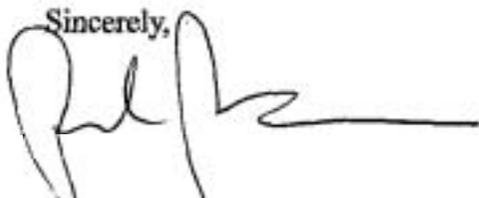
November 24, 2009

To: Members of the Planning Commission

RE: 805 Devonshire Way Fence Permit

I am a neighbor residing at 814 Devonshire Way. With respect to the Flesners' fence, it is my opinion that the construction of this fence is sound and fits into the character of the neighborhood and specifically to the design of the Eichler homes. The Eichler homes are designed in such a way that their perspective is to the interior, ie. the front courtyard and atrium, and not to the front yard space. My neighbor's home was originally designed with a front wall that allow for children to play safely while being supervised by their parents. The new fence provides more space for my neighbor's kids to safely play while maintaining the Eichler look. I believe that my neighbor's fence adds value to their home as well as to the surrounding neighborhood. I feel very strongly that they should keep their current design and no changes are necessary.

Sincerely,



Paul Murdock

795 Devonshire Way
Sunnyvale, CA
11/24/09

To Whom it May Concern,

This is regarding the fence at **805** Devonshire Way. We live adjacent to that property and the fence borders our yard. It is well constructed and fits aesthetically with the Eichler design. We do not feel "walled in" by it. The argument that it somehow breaks up the open feeling of the neighborhood is **ridiculous**. Eichlers by their design are walled off. There is no community activity going on out **front**. Yes, you can see lawns down the street, but all the activity goes on inside the courtyards and atria. There are few windows to the street, and those are **from** bedrooms. Children don't play in the **front** yards because there is no way to keep an eye on them **from** inside, and in this day and age that would be dangerous.

The owner was trying to maximize his children's play area, so he knocked down the existing wall and moved it out. He followed the Eichler lines in the fence's construction. We see no reason to make him tear it down.

Thank you,

Handwritten signatures of Barbara and Roger Pease. The signature on the left is 'Barbara Pease' and the signature on the right is 'Roger Pease'.

Barbara and Roger Pease



Photograph of the subject site from across the street showing the existing fence (unpermitted) at a height of 6'10".



Photograph of southeast corner of fence showing existing landscaping.



Photograph of southwest corner of fence showing existing landscaping.



Photograph of fence interior. The block wall shown in the photo is located at the front wall of the garage.



Photograph from inside fence gate showing the front of the home and the front yard space behind the existing fence.

PLANNING COMMISSION MINUTES OF JUNE 8, 2009

2009-0156: Appeal by the applicant of a Miscellaneous Plan Permit to allow a 6' 10" wood and concrete fence in the front yard for a site located at 805 **Devonshire Way** (APN:309-28-027) RK

Trudi Ryan, Planning Officer, presented the staff report and said an additional letter received this afternoon from the applicant has been provided on the dais.

Comm. Klein discussed with staff the fence composition with staff commenting that the material used is consistent with other fences in the neighborhood.

Comm. Travis discussed with staff the options available to the applicant regarding the setback and height of the fence as shown in the conditions.

Comm. Sulser asked staff to clarify the staff recommendation to reduce the fence to 4' 6" as he thought fences in the front yard were not be over 3' in height.

Comm. Hungerford discussed with staff the current height of the fence and the three fence modification options listed in the conditions. Staff discussed how the fence height is measured and other fences in the neighborhood.

Comm. McKenna said she thought there was a rule that fences could not be higher than 6' with staff explaining that side and rear properties can exceed 6' if the neighbors agree, however a permit is required. Comm. McKenna confirmed with staff that there is no maximum front yard fence height listed in the code.

Chair Rowe discussed with staff a fence appeal at a different address. Staff explained that the applicant was previously provided with two options to bring the fence in compliance and as the appeal report was being written a third option was added. Ms. Ryan said the applicant wants to keep what has been built. Chair Rowe expressed concern and some confusion on what is allowed for fences with staff saying that some fences were built without permits. Ms. Ryan said the code does not provide explicit direction and staff is trying to develop standards for fences. Chair Rowe discussed with staff a fence she saw that was being used to screen Recreational Vehicle parking.

Chair Rowe opened the public hearing.

Bret Flesner, appellant, explained his reasons for the appeal. He commented that there seems to be variations on what is allowed with a fence in the front yard and also upcoming variations on what would be allowed when modifying an Eichler home. He discussed his Eichler home layout, neighboring fences, and that he wanted to increase the useable space in his front yard. He discussed the existing fence, commenting that a

lot of thought was put into the design. He discussed neighboring fences, some that are permitted and some not. He said one of the nearby fences was omitted from the report which he thinks creates a bias in the report. He discussed the options provided by staff and the affect of the options if the fence were modified. He further discussed the Eichler style home and problems with modifying the fence. He said the original fence was higher than the one they have constructed. Mr. Flesner said demolition of this fence will be very expensive, discussed findings in the appeal, and said he does not think the findings are flexible. He said there is a timing issue with some of the information in the report. He said he is within code, and that the guidelines are not clear. He referred to Eichler Design guidelines being considered soon and said that the fence issue is confusing in these guidelines also.

Comm. McKenna discussed with the appellant the style of his courtyard Eichler and that it originally had a front fence. **Ms. Ryan** referred to attachment G, page two which shows an Eichler that is similar to Mr. Flesner's model, showing a courtyard with a cinder block wall.

Comm. Hungerford discussed with the appellant that without the fence there are large windows facing the street. Ms. Ryan added that that with the original design of the Eichler, the window looks into the courtyard, and if the wall down is removed you can see to the street.

Charles Fogle, a Sunnyvale resident and neighbor, said that he thinks the fence extends too far out, leaves very little front yard, and that the wood fence will weather and look ugly.

Raymond Hiller, a Sunnyvale resident and neighbor, said he finds the fence agreeable to the eye, and that it will protect Mr. Flezner's children and provide a safe place for them to play. He said lowering the fence makes the area less safe for the children.

Arthur Schwartz, a Sunnyvale resident, said that he does not think the fence fits with the Eichler design, and that the new fence is too close to the street and reduces the open feeling when walking through the neighborhood.

Mr. Flesner addressed the comments of public. He said the wood is preserved and he will maintain it. He discussed the other comments, adding that only 20 to 30% of the homes in the neighborhood retain the original Eichler design. He said the homes are about 50 years old and it is unrealistic to expect the neighborhood to not have some change. He said he thinks as homeowners there should be freedom to add value, and increase usability of their homes.

Chair Rowe closed the public hearing.

2009-0156 805 Devonshire Way

Comm. Klein made a motion to deny the appeal and uphold the decision of the Director of Community Development to approve the Miscellaneous Plan Permit including the Condition of Approval as recommended by staff to require the fence to either be built two feet beyond the plane of the garage wall or be reduced to four feet, six inches as measured from top of curb at the current location, or be built at **11'** from the property line (as constructed at **814** Devonshire Way). Comm. Hungerford seconded the motion.

Comm. Klein said he understands the appellant's concerns about the City's rules regarding fences. Comm. Klein said the most critical thing with a fence is the setback from the street to prevent the walled-in feeling. He said he thinks staffs alternatives give the appellant some flexibility to resolve the issue and that the fence having already been built cannot be a consideration on whether the appeal is granted.

Comm. Hungerford said that the Eichler designed homes tend to turn their backs on the street. He said on his site visit he saw different kinds of Eichler homes and that many of the homes on this street are cut-off from the street, and have wall extensions. He said for this neighborhood a wall is not a totally bad idea. He said he considered this home as if it were any other neighborhood, and thinks that staff's alternatives come up with a balance. He said agrees with the staff recommendation.

Comm. Travis said he would be supporting the motion.

Chair Rowe said that the neighbor across the street is the neighbor that has to view the fence. She said too many fences too close to the sidewalk develop a corridor. She said the Commission is asking for consistency in neighborhood and she feels this motion is equitable enforcement, a compromise, and provides the appellant three options to choose from.

ACTION: Comm. Klein made a motion on **2009-0156** to deny the appeal and uphold the decision of the Director of Community Development to approve the Miscellaneous Plan Permit including the Condition of Approval as recommended by staff to require the fence to either be built two feet beyond the plane of the garage wall or be reduced to four feet, six inches as measured from top of curb at the current location, or be built at **11'** from the property line (as constructed at **814** Devonshire Way). Comm. Hungerford seconded. Motion carried unanimously, **7-0**.

APPEAL OPTIONS: This decision is final.



CITY OF SUNNYVALE
ADMINISTRATIVE HEARING

MINUTES
Wednesday, November 25, 2009

2009-0753: Use Permit to allow a fence over 7' tall (approximately 7'1") in the front yard located at 805 **Devonshire Way**. (APN: 309-028-027) MH

In attendance: Bret Flesner, Applicant; Mark Easterday, Neighbor; Raymond Heller, Neighbor; Charles Fogle, Neighbor; Matt Cossoul, Neighbor; Andrew Miner, Administrative Hearing Officer; Mariya Hodge, Project Planner; Debbie Gorman, Administrative Aide.

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.

Mariya Hodge, Project Planner, stated that the fence has already been constructed and this project was heard at the Planning Commission in June at which the applicant was given three options for modifications. As of the date of the Administrative Hearing, none of the modifications have been made. The applicant has submitted an additional letter that was given to the hearing officer.

Mr. Miner opened the public hearing.

Bret Flesner, Applicant, received and reviewed a copy of the staff report. The applicant submitted two letters from neighbors in support of the project. Mr. Flesner then made a power point presentation explaining the reasoning for the project including leaving a space for a planned front addition to the house. Mr. Miner asked why the applicant was applying for additional height when the Planning Commission already made a decision on the fence height. The applicant stated that the options that were given at the Planning Commission Hearing were not consistent with the goals of the project. Mr. Miner asked why the fence was constructed prior to a decision being made. Mr. Flesner stated that when he initially met with Planning he was told he only had to worry about the vision triangle and since he had the resources to construct it he went ahead and did so. Mr. Miner stated that if the fence was to be moved back and lowered that it would give the same amount of privacy inside the home. The applicant stated that to some extent it does, but he does not want to have a boxed in feeling if the fence is moved towards the home.

Charles Fogle, Neighbor, stated that the fence sticks out too far and he does not believe it belongs so close to the street.

Matt Cossoul, Neighbor, stated that he believes the fence was designed to be a good fit with the neighborhood.

Raymond Heller, Neighbor, stated that the fence is quite different from what is seen throughout the neighborhood, but is beautifully designed.

Mark Easterday, a realtor specializing in Eichler homes, stated that he is in support of the fence and is in agreement with Mr. Heller's statement. He also mentioned that most Eichler homes do not have windows facing the front of the property since these homes were made to retain privacy. Mr. Miner asked Mr. Easterday how he felt about the location of the fence. Mr. Easterday stated that the location is debatable.

Mr. Fogle stated that he has windows in the front of his property and believes that the fence shouldn't stick out as much.

Bret Flesner reiterated his discussion points. He stated that he thinks the fence is attractive, accomplishes his goals, fits with the Eichler Design Guidelines, and if he has to change it he may not have has the resources to do that with a quality design.

Mr. Miner closed the public hearing.

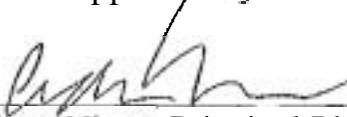
Mr. Miner approved the application subject to the same conditions imposed by the Planning Commission on Miscellaneous Plan Permit 2009-0156, which is to modify the fence to comply with one of three options, as listed below:

- 1) The fence shall be set back from the front property line so that it does not extend more than 2 feet beyond the face of the garage (approximately ~~19~~-foot setback required), and the fence shall not exceed 6 feet in height as measured from the grade (6feet 10 inches as measured from the top of the nearest adjacent public curb);
- 2) The fence may remain in its current location at a 6-foot setback from the front property line, and the fence shall not exceed 4 feet 6 inches in height as measured from the top of the nearest adjacent public curb (approximately 3 feet 10 inches above grade);
- 3) The fence shall be set back 11 feet from the front property line, and the fence shall not exceed 6 feet 5 inches in height as measured from the top of the nearest adjacent public curb.

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 2:55 p.m.

Minutes approved by:



Andrew Miner, Principal Planner

PLANNING COMMISSION MINUTES OF JANUARY 11, 2010

2009-0753: Appeal of the conditions imposed by the Administrative Hearing Officer in approving a Use Permit to allow a fence over 7' tall (approximately 7'1") in the front yard of a site located at **805 Devonshire Way**. (APN: 309-28-027) MH

Trudi Ryan, Planning Officer, presented the staff report correcting the title on the agenda saying the fence height indicated is 7 feet tall, not 7 inches tall. She said staff is recommending the Planning Commission deny the appeal and approve the Use Permit with the conditions imposed by the Administrative Hearing Officer. Ms. Ryan said additional information has been provided to the Commission this evening including a revised Attachment B and a copy of two letters received at the Administrative Hearing from neighbors in support of allowing the fence to remain as is.

Comm. Rowe referred to page 3 of the report and discussed with staff the timeline for this project as the fence was built prior to approval. She discussed with staff that the decision of the Planning Commission from June 8, 2009 was never complied with and asked staff what the timeline requirement was for the applicant to comply. Staff said there was no timeline provided to the applicant to complete the modifications to the fence, however the current application's recommended conditions would require the applicant to comply within 30 days. Staff explained the Neighborhood Preservation (NP) division allowed the delay of the compliance as the applicant applied for a new permit. Comm. Rowe discussed with staff the Eichler guidelines and how the guidelines affect existing fencing in the neighborhoods, including that the applicant's fence was approved with modifications in June of 2009, and the guidelines since then are stricter.

Comm. Sulser discussed with staff the process of this appeal and said that it is confusing that the appellant is able to apply for a new Use Permit when the Commission already considered this fence in June of 2009. Ms. Ryan said one of the options that NP gave the applicant, rather than to comply with the previous decision, was to apply for a new Use Permit and that the current application is for a slightly taller fence than was considered in the previous application.

Chair Chang opened the public hearing.

Bret Flesner, appellant, presented a PowerPoint presentation. He discussed the Project Goals, provided pictures of the existing fence, discussed Eichler design elements included in the design, and said that the most of his neighbors support the allowance of this fence except the neighbor across the street. He discussed standards used in the City of Sunnyvale and other properties in the

neighborhood that have front yard fences. He mentioned other Eichler home approved projects that he thinks different standards were applied to including a project on Pome Avenue. He said this project is beneficial to the homeowner and to the neighborhood, that the design elements embrace numerous Eichler elements, and discussed different options offered to him. He encouraged the City to administer permits ensuring equal protection for property owners, adherence to code, and support the intent of supplemental guidelines.

Barbara Pease, a Sunnyvale resident and neighbor, spoke in support of approving the appeal and said this fence is an absolute improvement, that it is well constructed, and that she has no complaints about it.

Charles Fogle, a Sunnyvale resident and neighbor, spoke against the approval of the appeal and said he thinks the fence extends too far out towards the sidewalk. He said if this fence is approved then others will also want to have their fences close to the sidewalk which would negatively affect the neighborhood by taking away the open feel of the street.

Raymond Heller, a Sunnyvale resident and neighbor, spoke in support of approving the appeal. He said he finds the fence modern, majestic, an improvement to the neighborhood, and it protects Mr. Flesner's children. He said the fence is good looking and well done.

Mr. Flesner said this situation is about regulating looks, feels, and fits. He said this needs to be done on a uniform basis and the guidelines need to account for that. He said that other homes are being built and other standards are being used regarding "fit". He said the existing fence has no detrimental impact on others or the neighborhood, and the fence cannot even be seen from down the street. He said the City needs to look at property rights and make sure we are all treated the same way with the same standards as far as visual impact.

Chair Chang closed the public hearing.

Comm. Rowe asked staff to address the Eichler home on Pome Avenue mentioned by the appellant with Ms. Ryan saying she does not know the situation with the Pome Avenue project at this time.

Vice Chair Travis asked staff where the recently approved Eichler Design Guidelines would place the fence. Ms. Ryan said the current Eichler guidelines encourage that taller fences be setback 15 feet. She said staff went with the original recommendation from the previous application which would allow the fence at the current height with a 19 foot setback or a shorter fence with an 11 foot setback which would be similar to the fence across the street.

Comm. Rowe moved for Alternative 1, to deny the appeal and approve the Use Permit with the conditions imposed by the Administrative Hearing Officer shown in attachment B. Vice Chair Travis seconded the motion.

Comm. Rowe said that the appellant is concerned about privacy and the front windows which could be handled with curtains. She said she has no problem with the fence design, only with the setback. She said this motion is to preserve a neighborhood not just an individual's house. She said the previous decision was a compromise and she said she would like to see the compromise worked out. Comm. Rowe said Mr. Fogel wrote a compelling letter regarding Eichler homes and retaining the open feel of the streets. She said she agrees the fence is consistent with the Eichler design, except for the setback. She said homeowners have to think more of the neighborhood. She said the design of the fence and landscaping are fine, however the fence is too close to the sidewalk.

Vice Chair Travis said he likes the design of fence, and was a little confused as to why the Planning Commission was seeing this project again. He said this situation has become less of a compromise and more of an awkward negotiation, where the City and the appellant are going in opposite directions. He said he looks at the recent Eichler Design Guidelines and thinks the fence should have to comply with them, however he is willing to stick with the original compromise.

Comm. Klein said he would be supporting the motion. He said the appellant is asking for adherence to the code, and if the code were truly adhered to, any fence over 6 feet would have to have a 15 foot setback. He said he understands there are other fences in the community that do not meet current standards, however fences built today must be built by today's codes. He said he agrees with the neighbors that the appearance of the fence is lovely, and ultimately the issue is the setback. He said the code is meant to maintain balance throughout the City adding that the decision made last June was more lenient than the current Eichler Design Guidelines would allow.

ACTION: Comm. Rowe made a motion on 2009-0753 to deny the appeal and approve the Use Permit with the conditions imposed by the Administrative Hearing Officer (see attachment B of the report). Vice Chair Travis seconded. Motion carried, 7-0.

APPEAL OPTIONS: This action is final unless appealed to City Council no later than January 26, 2010.