



**CITY OF SUNNYVALE
REPORT
Administrative Hearing**

March 31, 2008

SUBJECT: **2008-0183:** 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 2' 6" where a 6' minimum is required, and to allow an accessory utility building less than 5' from the main residence.

REPORT IN BRIEF

Existing Site Conditions Single-Family Residence

Surrounding Land Uses

North Serra Elementary School

South Single-Family Residence

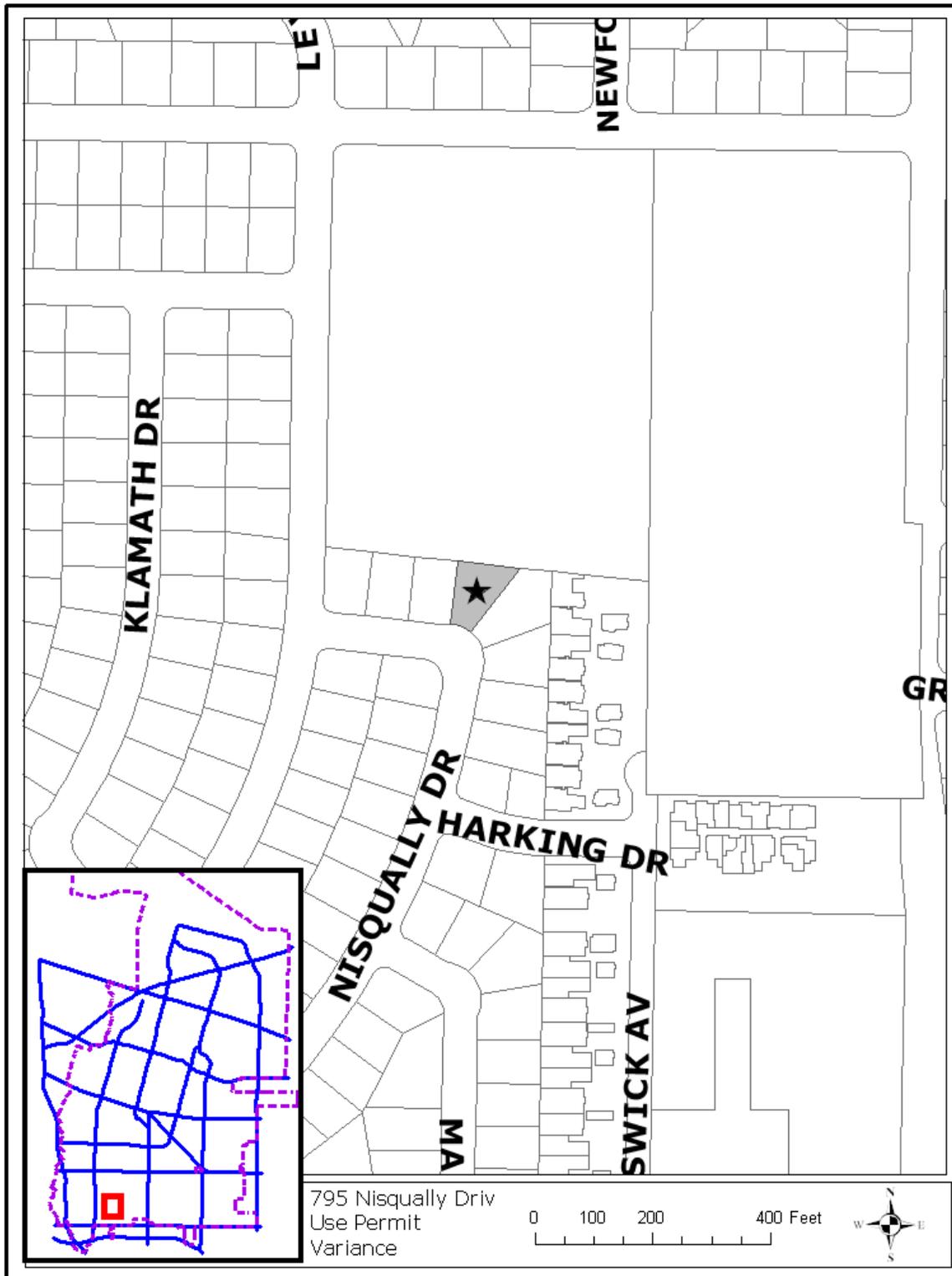
East Single-Family Residence

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.

Staff Recommendation Denial



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=2'-6"	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'	5' 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, 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.

Background

The existing home was built in 1960. No significant permits have been obtained for this property.

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. There are no other accessory utility buildings on the property.

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. The proposed distance between structure A and the home deviates from the requirement contained in SMC 19.40.020, which requires that a 5' minimum distance be maintained.

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 2'-6".

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. In addition, staff has explored the option of transplanting the rhododendrons to another location with the applicant. The existing rear yard provides almost 3,000 square feet of usable open space, which can potentially be used to accommodate the two shrubs.

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, and the minimum distance required between an accessory utility building and the home. The applicant proposes a side yard setback of 1' for structure A and 2'-6" for structure B, where 6' minimum is required in the R-1 Zoning district. In addition, structure A is located 2' from the home, where 5' minimum is required.

The project is a result of a complaint; therefore, the applicant would be required to make modifications to the structures in a timely manner. If the project is approved, staff recommends that the structures be completed within 30 days of the decision date. If the project is denied, the applicant would be required to remove the structures within 30 days of the decision date.

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 neighborhood.

Fiscal Impact

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

Public Contact

Staff has not received any comments from neighbors at the time of this staff report.

Notice of Public Hearing	Staff Report	Agenda
<ul style="list-style-type: none"> Published in the <i>Sun</i> newspaper Posted on the site 	<ul style="list-style-type: none"> Posted on the City of Sunnyvale's Website 	<ul style="list-style-type: none"> Posted on the City's official notice bulletin board

<ul style="list-style-type: none"> • 5 notices mailed to property owners and residents adjacent to the project site 	<ul style="list-style-type: none"> • Provided at the Reference Section of the City of Sunnyvale's Public Library 	<ul style="list-style-type: none"> • City of Sunnyvale's Website
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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 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:

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 Administrative Hearing Officer 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 Use Permit and Variance.
2. Approve the Use Permit and Variance with the attached conditions.
3. Approve the Use Permit and Variance with modified conditions.

Recommendation

Alternative 1.

Prepared by:

Noren Caliva

Project Planner

Reviewed by:

Andrew Miner

Principal Planner

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

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. The Variance shall be null and void two years from the date of approval by the final review authority if the approval is not exercised.
- B. 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.
- C. 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.
- D. The two shade structures shall be installed for a duration of five years, and shall be removed by April 1, 2013. An extension of this permit may be requested through an Administrative Hearing.
- E. Construction of the two shade structures shall be completed within 30 days of the approval date.

House

ANT POCKETS

MOB CANS (EN)

SARAGE

2 SCREEN (SOLID)

PLANT BOX

LAWN

SIDEWALK

NORTH

Side view



"B" 5'3" ←

New Japanese Maple

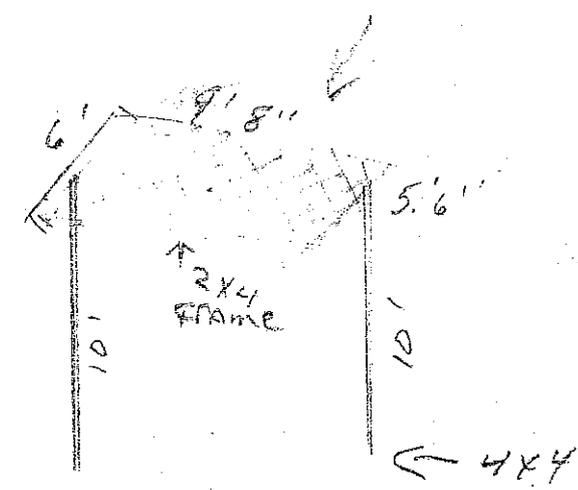
EXPOSED AGG.

WOOD SCREEN (OF

Existing "Bloodgood" Japanese Maple

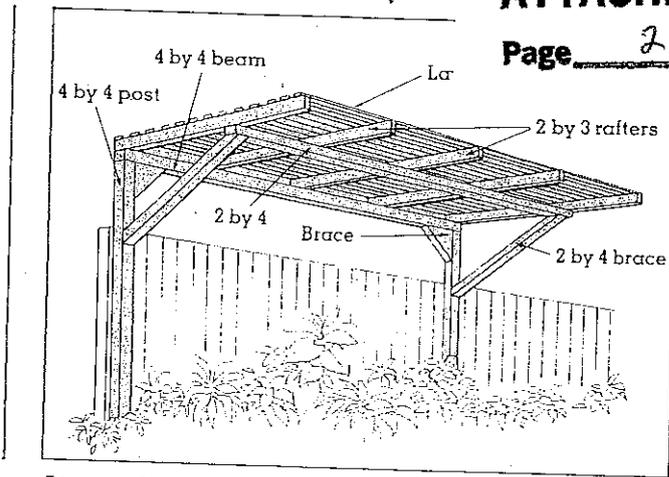
EXPOSED AGGR. CONCRETE ("SAND")

LATTICE

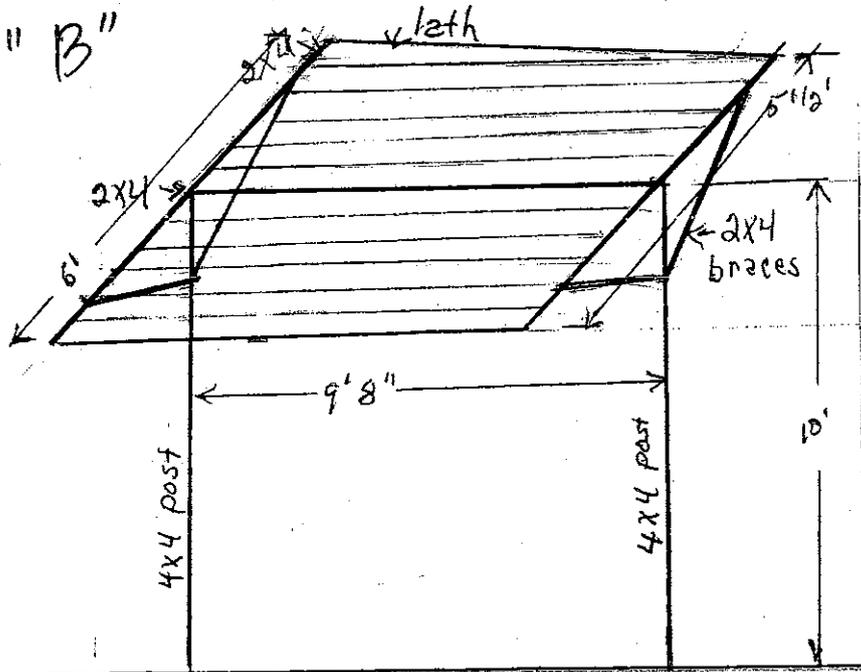
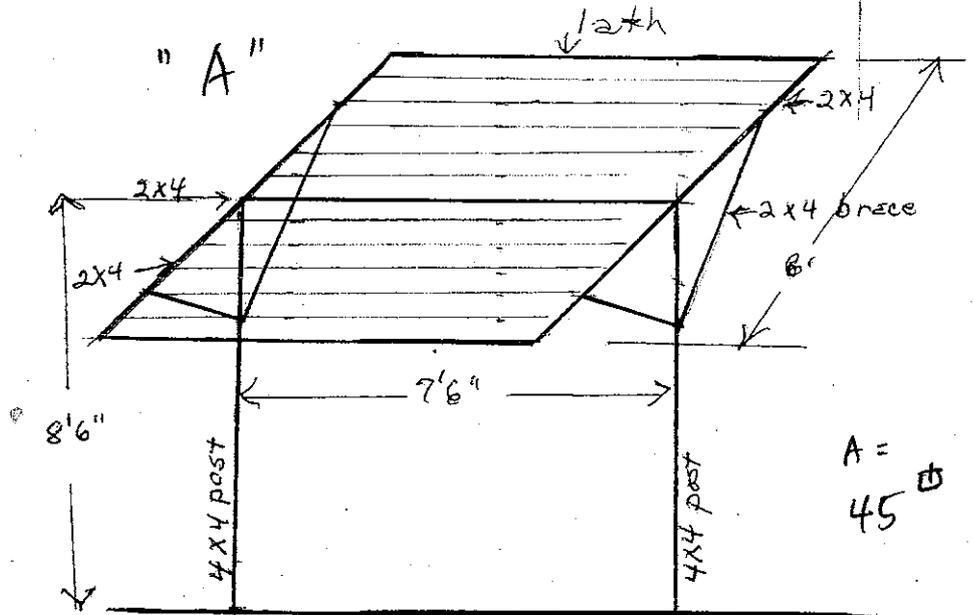


Sunshade for pla

ATTACHMENT C



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 A+B = 103 sq ft

Project Description

795 Nisqually Dr.

ATTACHMENT D

Page 1 of 1

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 older 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 structure, 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

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.

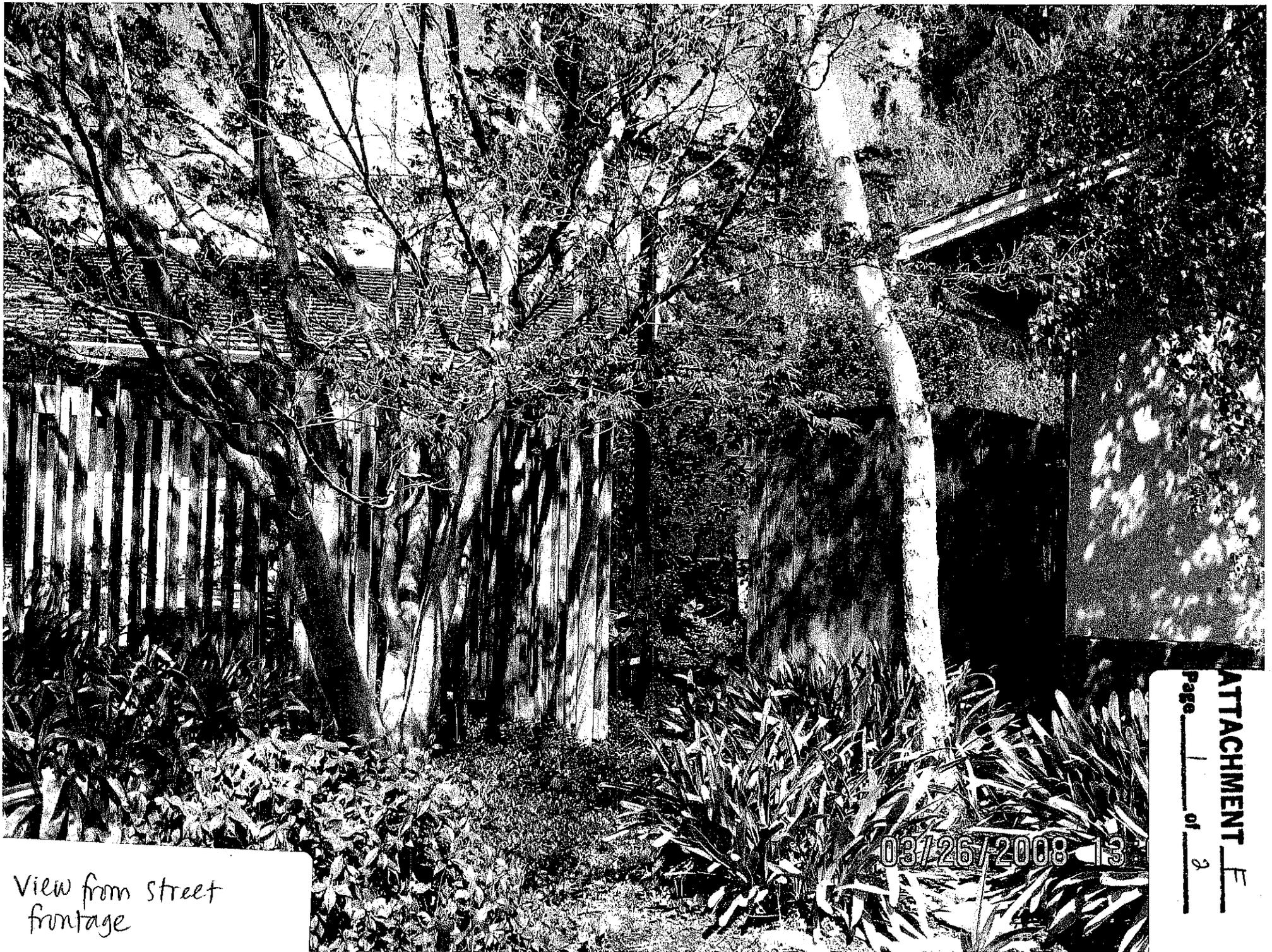
1. The proposed use attains the objectives and purposes of the General Plan of the City of Sunnyvale as the project ...

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

01-07-2008 796 Nisqually Drive 02



View from courtyard

01/07/2008 14