



**CITY OF SUNNYVALE
REPORT
Administrative Hearing**

September 10, 2008

SUBJECT: **2008-0853:** Application for a property located at **400 Southwood Avenue** (at S. Bayview Ave.) in an R-0 (Low Density Residential) Zoning District.

Motion Variance from Sunnyvale Municipal Code section 19.48.020 to allow an approximately 6' tall front yard fence within the required 40' corner vision triangle.

REPORT IN BRIEF

Existing Site Conditions Single-family residence

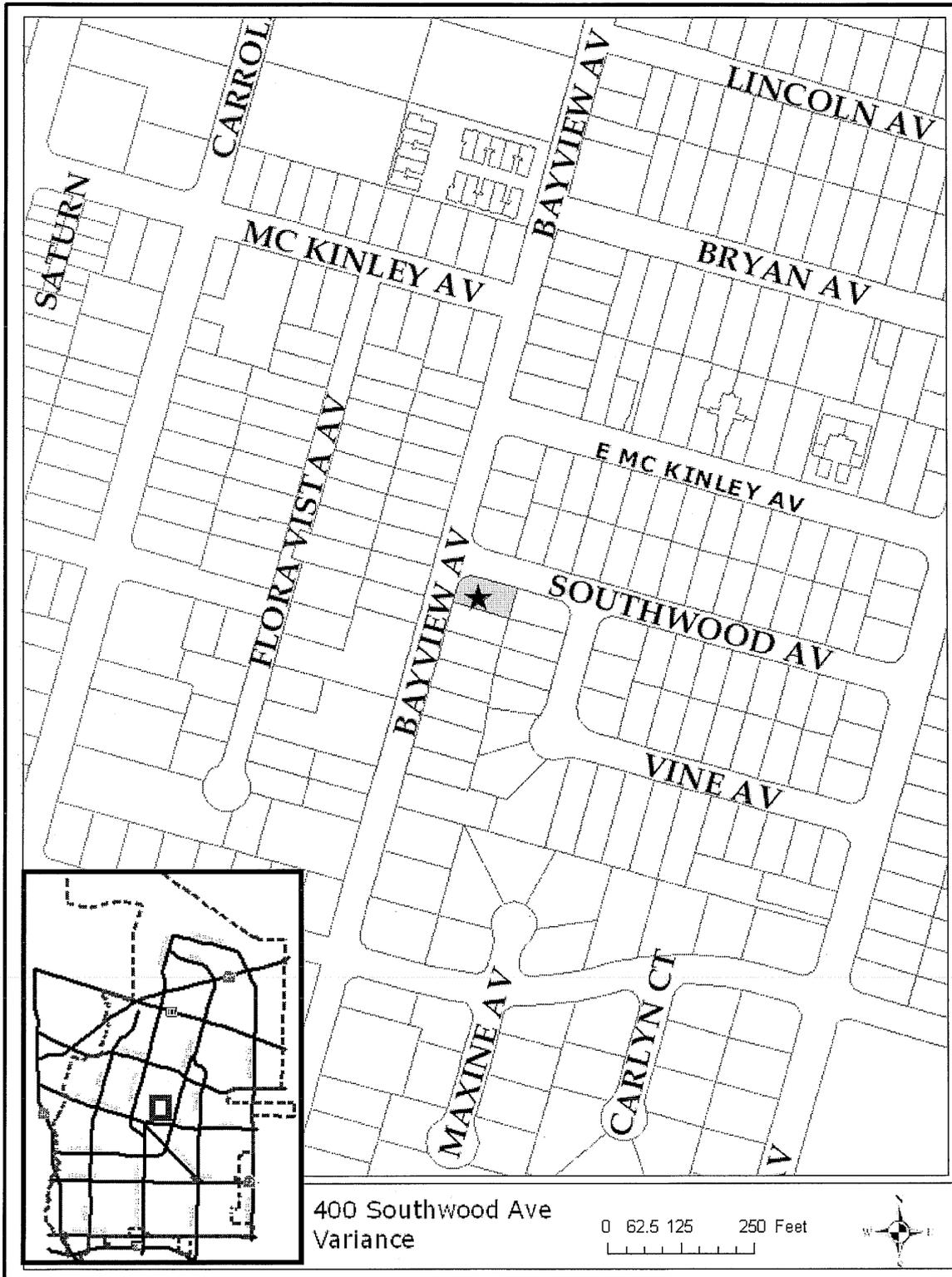
Surrounding Land Uses

- North Single-family residence (across Southwood Ave.)
- South Single-family residence
- East Single-family residence
- West Single-family residence (across Bayview Ave.)

Issues Variance (corner vision triangle);
Fence height and location.

Environmental Status A Class 3 Categorical Exemption relieves this project from California Environmental Quality Act provisions and City Guidelines.

Staff Recommendation Deny the Variance



PROJECT DATA TABLE

	EXISTING	PROPOSED	REQUIRED/ PERMITTED
General Plan	Residential Low-Density	Same	Residential Low-Density
Zoning District	R-0	Same	R-0
Lot Size (s.f.)	5,143	Same	6,000 min.
Gross Floor Area (s.f.)	1,511	Same	2,314 max.
Lot Coverage (%)	29.4%	Same	45% max.
Floor Area Ratio (FAR)	29.4%	Same	45% max. without PC review

★ Starred items indicate deviations from Sunnyvale Municipal Code requirements.

ANALYSIS

Description of Proposed Project

The applicant proposes to construct a 6’ tall fence in the required front yard, which will consist of 5’ of solid wood topped by 1’ of lattice. The fence will be located within the 40’ corner vision triangle, therefore the applicant is requesting a Variance from SMC section 19.48.020 to allow a vision triangle encroachment.

Background

Previous Actions on the Site: The following table summarizes previous planning applications related to the subject site.

File Number	Brief Description	Hearing/Decision	Date
2008-0281	Miscellaneous Plan Permit to allow a 6- to 7-foot tall fence along the side and rear property lines	Staff Review / Approved	05/15/2008

File Number	Brief Description	Hearing/Decision	Date
1995-0150	Miscellaneous Plan Permit to allow a 6-foot tall solid fence in the required front yard (outside the vision triangle) and to allow a 3' tall picket fence along the reducible front and required front yards	Staff Review / Approved	06/13/1995

Environmental Review

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

Variance

Site Layout: The subject site is located on the corner of Southwood Avenue and Bayview Avenue. The front of the home faces the reducible front yard along Southwood Avenue. The required front yard is located along Bayview Avenue, and is used by the applicant as a side yard. There is a detached garage located in the rear yard to the east of the home. Due to the home’s orientation and the location of the garage, there is very little private open space on the property.

There is currently an open wood picket fence located adjacent to the sidewalk along the full length of the required front and reducible front yards with a height of 3’ 8” (see Attachment E – Site Photographs). The applicant proposes to maintain this fence. There is also an existing 5’ 8” tall solid wood fence located in the required front yard along Bayview Avenue. The existing fence is set back of approximately 8’ 10” from the back of the sidewalk (Attachment E). The applicant proposes to remove this fence and construct a new 6’ tall fence at the back of the sidewalk to capture more private open space in the required front yard. The new fence will be located within the 40’ corner vision triangle, therefore the applicant is requesting a Variance from SMC section 19.48.020 to allow a vision triangle encroachment.

Compliance with Development Standards/Guidelines: SMC section 19.48.020 states that no fence may exceed 3’ in height in a corner vision triangle or driveway vision triangle except as approved by a Variance. The corner vision triangle is defined in SMC section 19.12.040 as “the triangular area created by a line connecting points along the two front lot lines which points are established 40’ in distance from the intersection of the extension of

such front lot lines within the street right of way.” The proposed fence is not in compliance with the corner vision triangle requirement, therefore the applicant is requesting a Variance.

All fences located in the required front yard also require staff review of height and design. Sunnyvale’s Single Family Home Design Techniques state the following:

Fencing along front property lines and along side property lines within front yard setback areas should not exceed three feet in height. Open wood fencing is the preferred solution along front property lines (item 3.11.G).

The proposed fence would be located along the required front property line and would be significantly taller than the maximum height recommended in the Design Techniques. The fence would also consist of solid wood boards topped with lattice, rather than using an open fencing design as recommended in the Design Techniques. Where taller fences may be needed in front yards, such fences should have significant setbacks and should be screened with landscaping to avoid negative visual impacts on the streetscape and surrounding properties. The proposed fence would be located directly adjacent to the sidewalk and there would be no opportunity for landscaping directly in front of the fence to soften its appearance. As a result, staff finds the proposed fence is not in compliance with the Single-Family Home Design Techniques.

Staff also notes that the previously-approved Miscellaneous Plan Permit (#1995-0150) permitted an open wood picket fence with a height of 3’ along the required front and reducible front property lines. The existing picket fence on the property is taller than 3’, therefore it is not in compliance with the approved permit. Staff notes that the applicant must either reduce the height of the fence to no more than 3’ (including height of posts), or must obtain approval of a separate Miscellaneous Plan Permit to allow the fence at its current height.

Variance Justifications: In order to approve a Variance for the proposed fence, findings must be made that there are exceptional circumstances related to the property or use which deprive the property owner of reasonable use; that the proposed project will not be detrimental to adjacent properties or uses; and that the granting of the Variance will not constitute a special privilege not enjoyed by others in the Zoning District (see Attachment A).

The applicant has addressed the three required findings for a Variance in Attachment D - Justifications. A summary of the applicant’s justifications is provided below. Staff’s comments regarding each justification are provided in italics.

1. The applicant seeks to create enough private open space in a sunny area of the lot to allow them to dry laundry outdoors and to grow a vegetable garden.

Staff comment: None.

2. Approximately 40% of the lot on the east side of the property is shaded by a neighbor's tree, therefore it is not a suitable area for the desired activities. Additional space is needed on the sunnier west side of the property.

Staff comment: The tree's shade may limit the amount of sun in the rear yard of the subject site, and consequently may limit some of the activities that may be enjoyed in the yard (such as drying of laundry). This is a common condition on many properties with large trees.

3. The property is unique in that it is small (4,791 square feet as reported by the applicant) and is a corner lot, therefore the corner vision triangle takes up 1/6 of the overall lot area.

Staff comment: According to City records, the size of the lot is 5,143 square feet, not 4,791 as stated by the applicant. A 40' corner vision triangle has an area of 800 square feet. However, not all of this area is on the lot itself; some of the triangle extends into the public right-of-way. In this case, approximately 160 square feet of the vision triangle are estimated to be located off the property in the right-of-way, therefore the corner vision triangle limits the use of approximately 1/8 of the lot. Staff notes that the standard lot size in the R-0 Zoning District is 6,000 square feet and the standard lot width for a corner lot in the R-0 Zoning District is 62'. With a size of 5,143 square feet and a lot width of 52', the property is both smaller and narrower than the standard for the Zoning District.

4. The property has additional unique conditions including the fact that the house faces the reducible yard and the fact that there is no sidewalk on Southwood Avenue.

Staff comment: In general, homes on corner lots are oriented toward the required front yard, and the reducible front yard is used as a "side yard." There are several homes in the City which are oriented toward the reducible front yard instead of the required front yard, but it is an unusual condition. This condition, combined with the narrow width of the lot, does reduce the amount of private yard space available. The applicants also state that there is no sidewalk along Southwood Avenue. This is not a

unique condition and it is not clear how this condition would create restrictions on the applicants.

5. The house is already located in the corner vision triangle (legal non-conforming condition), and the proposed fence will not further reduce visibility beyond what is currently blocked by the house.

Staff comment: Staff believes the proposed project does have the potential to have an impact on traffic visibility. There are certain viewing angles for which the proposed fence will not block any view that is not already blocked by the house, as the applicant shows in Attachment C. However, there are other viewing angles for which the fence will block more view than the house currently does, as shown in staff's illustration in Attachment F.

6. There is already a high fence in the front yard, and there is a landscape strip between the sidewalk and street on Bayview Avenue, so the proposal would not significantly alter the appearance of the front yard from the street.

Staff comment: When fences are approved at heights greater than what is recommended in the Single Family Design Techniques, staff typically requires setbacks from the sidewalk with landscaping planted in front of the fence to soften the appearance of the fence and mitigate visual impacts. The applicants have already been permitted a 6' fence in the required front yard under a previous permit (#1995-0150) to provide them with additional privacy due to their unusual property orientation. They were required to set the fence back from the sidewalk to mitigate visual impacts on the streetscape, and to design the fence to stay out of the corner vision triangle. Staff believes building the fence within the front setback would have a significant visual impact on the streetscape as well as on the adjacent property.

7. Many other properties in the neighborhood enjoy the privilege of 6' or 7' tall fences along property lines, which cannot be enjoyed on this property due to the constraints above.

Staff comment: There are many 6' fences in the surrounding neighborhood, but they are located in reducible front yards, not required front yards. As noted above, the applicants have already been permitted a 6' fence in the required front yard to provide them with additional privacy. However, they were required to keep the fence set back from the sidewalk and keep the fence out of the corner vision triangle. Staff believes the previous decision was a reasonable accommodation of the property's condition which is

consistent with the treatment of other fences in the neighborhood and the City.

Expected Impact on the Surroundings: The proposed fence would have a solid wood design with a height of 6', and would be located directly adjacent to the sidewalk. There would be no opportunity for landscaping directly in front of the fence to soften its appearance. As a result, the proposed fence has the potential to have a negative visual impact on the streetscape by creating a walled-in appearance along the sidewalk in the required front yard. The proposed fence also has the potential to negatively impact the adjacent property to the south by placing a tall fence adjacent to their entire side property line, creating a walled-in feeling in their front yard. The proposed Variance from the corner vision triangle requirement would reduce traffic visibility from certain viewing angles (Attachment F), therefore it has the potential to negatively impact traffic safety in the neighborhood.

Fiscal Impact

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

Public Contact

Notice of Public Hearing	Staff Report	Agenda
<ul style="list-style-type: none"> Published in the <i>Sun</i> newspaper Posted on the site 13 notices mailed to property owners and residents adjacent to the project site 	<ul style="list-style-type: none"> Posted on the City of Sunnyvale's Web site Provided at the Reference Section of the City of Sunnyvale's Public Library 	<ul style="list-style-type: none"> Posted on the City's official notice bulletin board Posted on the City of Sunnyvale's Web site

In response to these contacts, staff received a phone call from a neighboring resident asking about the scope of the proposed project and the reason for needing a Variance. Staff returned the phone call and provided information about the project and opportunities to comment. No comments were received.

Conclusion

Findings and General Plan Goals: Staff is recommending denial of this project because the required Findings (Attachment A) were not made.

Conditions of Approval: If the Administrative Hearing Officer is able to make the required Findings to approve the project, staff is recommending the Conditions of Approval in Attachment B.

Alternatives

1. Deny the Variance.
2. Approve the Variance with the conditions listed in Attachment B.
3. Approve the Variance with modified conditions.

Recommendation

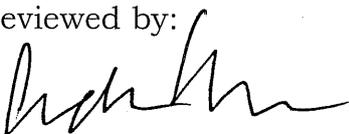
Alternative 1

Prepared by:



Mariya Hodge
Project Planner

Reviewed by:



Andrew Miner
Principal Planner

Attachments:

- A. Recommended Findings
- B. Recommended Conditions of Approval
- C. Site Plans and Elevations
- D. Applicant's Variance Justifications
- E. Site Photographs
- F. Illustration of Potential Traffic Impacts

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 made]*

The subject property is both smaller and narrower than the minimum standards for corner lots in the R-0 Zoning District. The home is oriented toward the reducible front yard rather than the required front yard, which is an unusual condition. The home is placed close to the south property line, limiting the available space behind the home. These conditions deprive the property owner of enjoyment of a reasonably sized private yard area, which is enjoyed by other properties in the vicinity and within the same Zoning District.

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 made]*

The proposed fence would be located in the corner vision triangle. Although a portion of the home is already located in the vision triangle, staff analysis indicates the proposed fence has the potential to create additional visual obstruction (Attachment F). The proposed fence has the potential to be detrimental to surrounding properties and uses by reducing traffic visibility and safety, therefore this finding cannot be made.

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 made]*

Granting the Variance would allow the property owner to enjoy the use of the required front yard as a private open space. This is not a privilege enjoyed by other surrounding property owners in the Zoning District. As a result, this finding cannot be made. Granting the Variance would constitute a special privilege for the applicant.

Recommended Conditions of Approval - Variance

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 project shall be in conformance with the plans approved at the public hearing(s). Minor changes may be approved by the Director of Community Development. Major changes shall be treated as an amendment of the original approval and shall be subject to approval at a public hearing.
- B. If a Building permit is required, these Conditions of Approval shall be reproduced on a page of the plans submitted for a Building permit for this project.
- C. The Variance shall be null and void two years from the date of approval by the final review authority at a public hearing if the approval is not exercised, unless a written request for an extension is received prior to expiration date.
- D. The Variance shall expire if the use is discontinued for a period of one year or more.

2. COMPLY WITH OR OBTAIN OTHER PERMITS

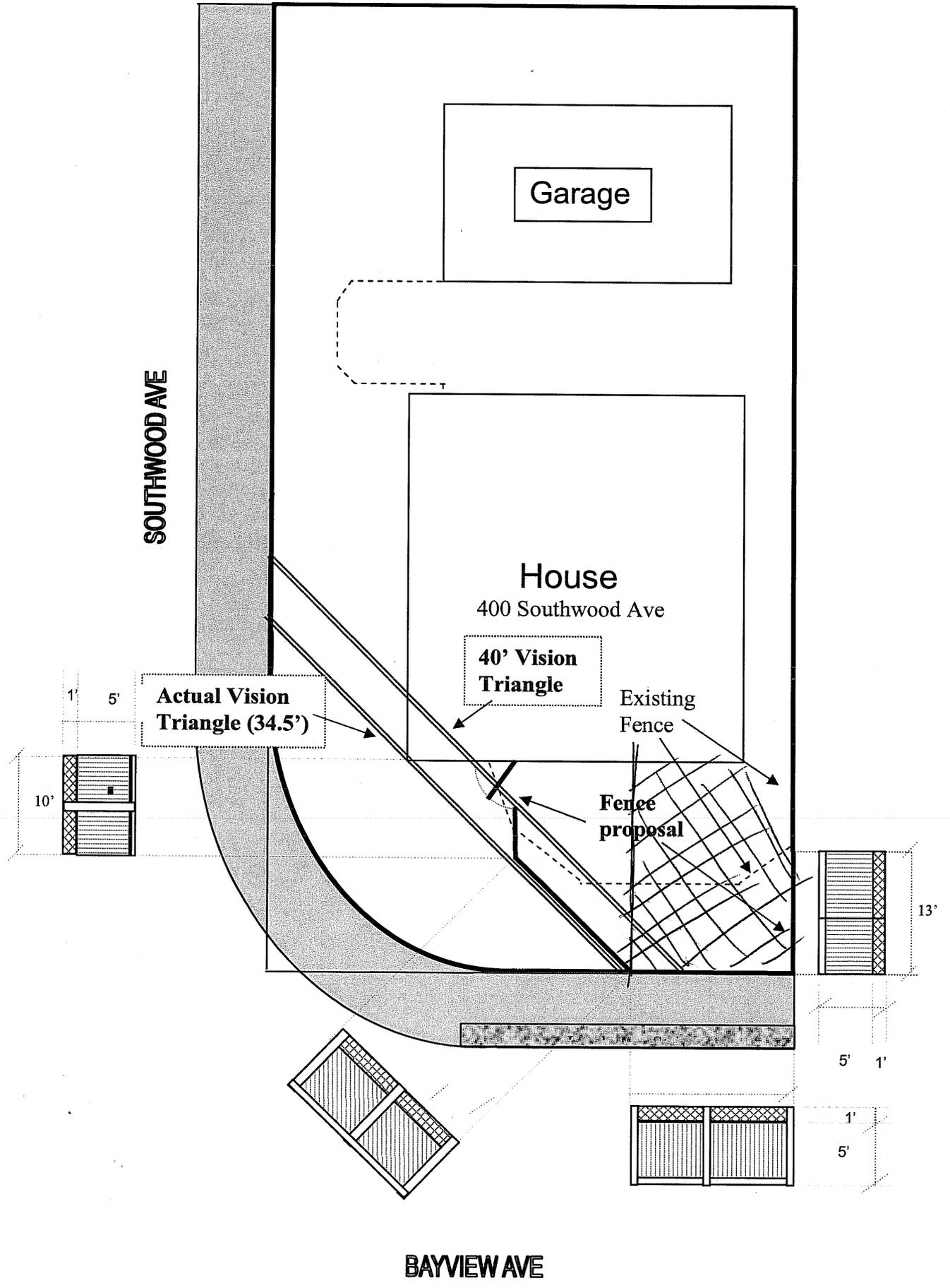
- A. Obtain Building permits if required.
- B. To comply with previously-approved Miscellaneous Plan Permit #1995-0150, the open wood picket fence in the required front and reducible front yards shall be reduced to a total height of no more than 3', unless a new Miscellaneous Plan Permit is approved to allow the current height. The fence shall be brought into compliance within 60 days of the date of this approval.

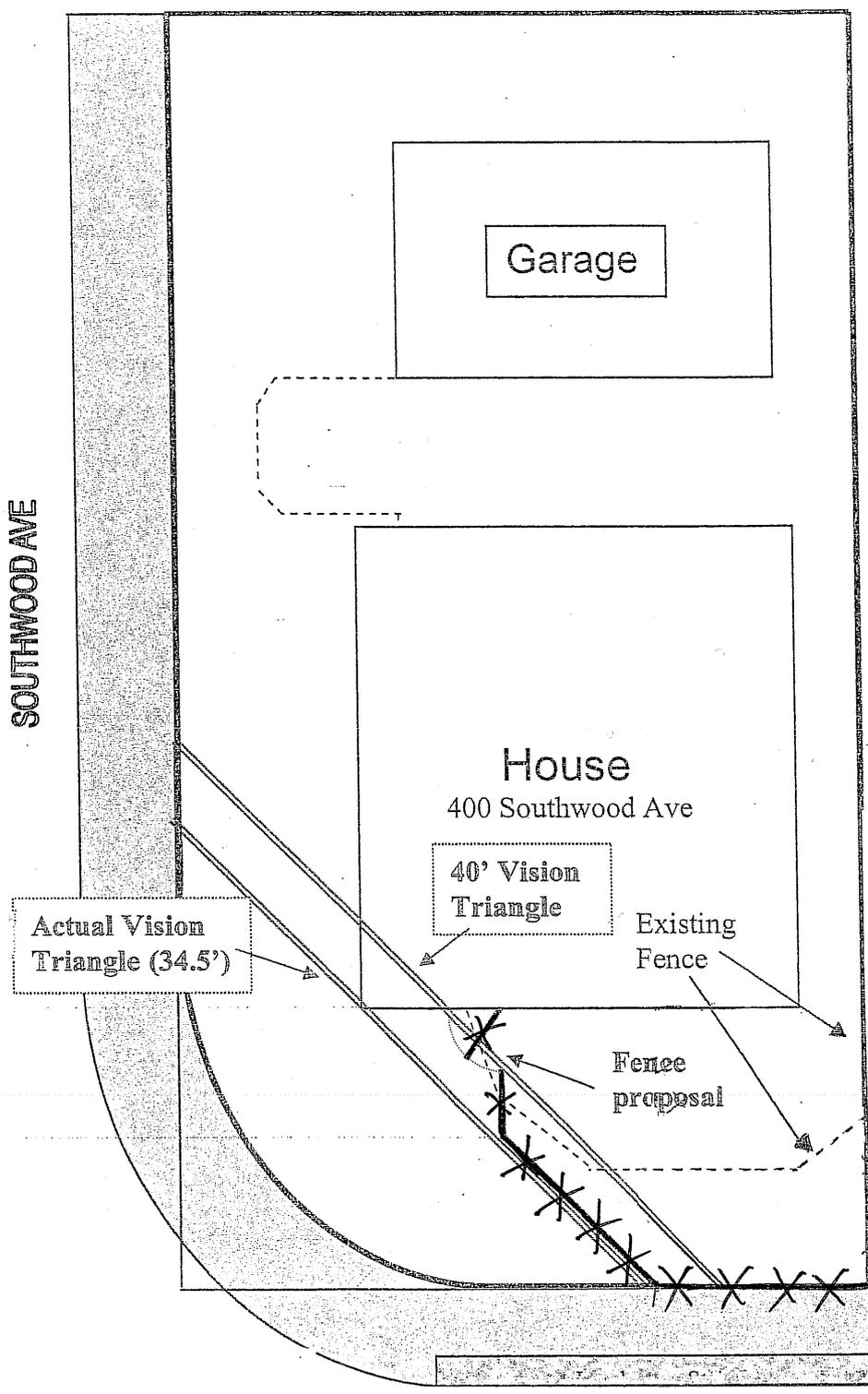
3. FENCES

- A. The fence shall not exceed a height of 6' as measured from the top of the adjacent public curb.
- B. The fence shall be painted to match the home, similar to the existing 6' front yard fence.

Attachment C

Site Plans and Elevations





----- Existing fence line
* * * * * Proposed fence line

Attachment D

Applicant's Variance Justifications

Fence Application**Project Goals:**

1. To maximize the back yard area of our property that lies within the reducible front yard area adjacent to Bayview Avenue.
2. Meet the intent and purpose Sunnyvale planning and permit ordinances.

Intent:

The intended usage of this backyard area is threefold. Firstly we would like to have a larger private lawn area for our daughter to play in. The existing area is so small it is difficult to even kick a ball around. Increasing the depth of the yard will help this. Secondly, we wish to create space for a vegetable garden - a space where we can grow a small crop of different fruits and vegetables so we can both enjoy homegrown fresh produce and teach our daughter how and where food comes from. Lastly, living in such a great climate as Sunnyvale, it is nonsense not to make use of the solar and wind energy for drying and airing our clothes. Doing this discretely is important for us and our neighbors, so a sunny, yet private, yard area is vital.

Existing constraints:

The property layout is unique in that the block size is small (4,791 sqft), on a corner, the house faces the reducible front yard and there is no sidewalk adjacent to Southwood Ave. Though there are areas on the property that are potentially able to meet the intent of the backyard area we are constrained by two factors. Firstly, the 40' vision triangle which covers 1/6th of the total area of the property and secondly, a neighbor's large oak tree that shades the majority of the back half of the property. The former constraint prevents a large square backyard that is enjoyed by most properties - even most corner blocks, and the latter constraint limits our sunshine needed for our garden (though makes for a great patio area). A larger area on the western side of the property would get plenty of afternoon sun, provide a private lawn area and can be built within the existing sight-lines created by the house that already interferes with the 40' vision triangle.

Justifications:

By our measurements the Northwestern corner of our house lies within the 40' vision triangle by approximately 5¹/₂ feet thus reducing the effective vision triangle to a 34¹/₂ feet. The vision triangle is therefore already reduced so our proposal is to utilize this extra area for our backyard. An existing fence lies outside the vision triangle so the proposal would be to effectively replace this fence with one that follows the property lines and the effective vision triangle closer. By doing so we will be meeting the project goals and intent of a larger, more open and sun-filled yard area. The proposal also includes having the fence extend to the sidewalk adjacent to Bayview Avenue. Though high fences in the front yard are discouraged, we feel this is justified because firstly there is an existing high fence in this yard and there is a landscape strip between the sidewalk and the curb on Bayview Avenue that we maintain with drought resistant plants and ground cover. The height of the proposed fence will not exceed 6' which is the same as the existing fence and will be 5' solid and 1' privacy lattice as encouraged by the city and as is typical in and around the neighborhood. To avoid an excessive walled-in look we have opted not to propose a 7' fence as other properties in this situation have in the neighborhood.

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.*

The extraordinary circumstances in this case are:

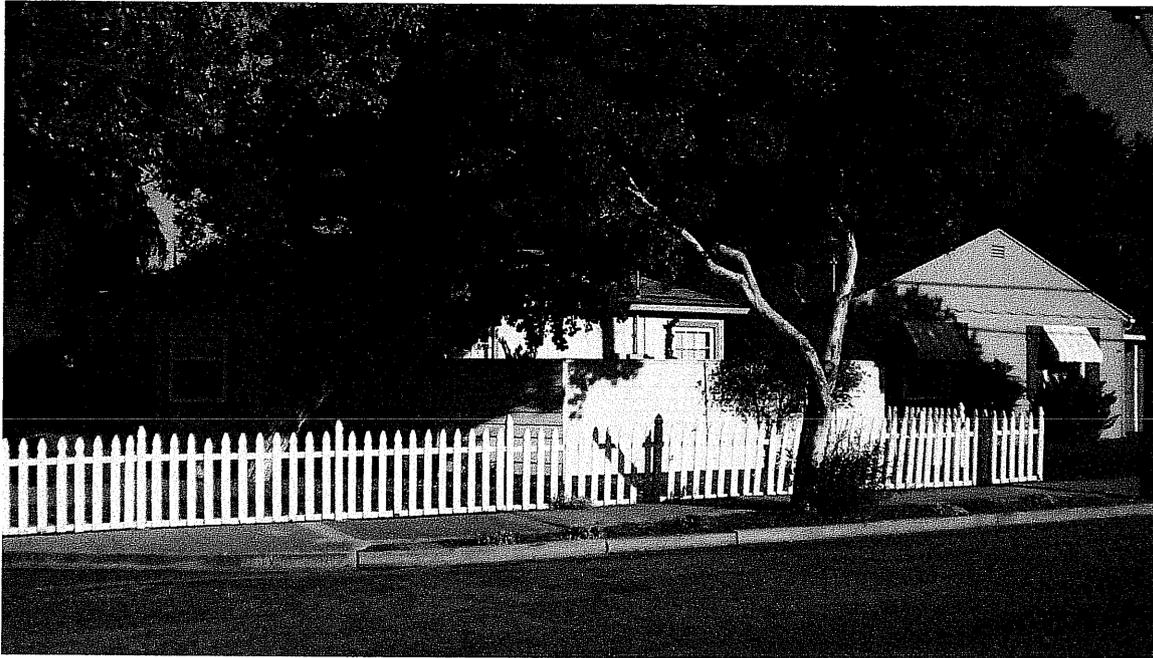
- The Northwest corner of the house extends 5.5' into the 40' corner vision triangle of the property.
 - Due to the small size of the block (4,791 sqft), the vision triangle (800 sqft) area covers 1/6th of the total property area.
 - The proposed fence on the Western side of the property will create an area suitable for the goals of the project that can't be met in any other areas on the property – due in part to the Neighbor's Oak tree on the southeast side shading approximately 40% of the property.
 - The layout of the property with the block size and shape, house facing along the reducible front yard and the lack of sidewalk adjacent to Southwood Ave makes this property unique and should be considered a candidate for variance approval.
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.*
 - Because the house already extends into a portion of the 40' vision triangle, the proposed fence will not create a situation that will further impede the vision of drivers, cyclists or pedestrians.
 - As there is an existing fence of similar height and width already in the reducible front yard, the view of the property and street-scape will only be slightly altered from the existing view from the adjacent neighbors on Bayview Ave.
 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.*

The ordinance will be served and no special privileged granted because:

- The purpose of the vision triangle requirement is to allow adequate sight-lines at street intersections to ensure safety. If this Variance is granted, there will be no change in the vision sight-lines of the property due to the fence.
- A large amount of other corner properties in the immediate neighborhood are privileged with high fences to their property line or side walk, in some cases up to 7' tall and within the 40' vision triangle in both the front yard and reducible front yard areas. In the case of this application, there is also a landscape strip that should allow a fence built to the side walk.

Attachment E

Site Photographs



Photograph taken from Bayview Avenue showing the existing fences in the required front yard and the adjacent home to the south.

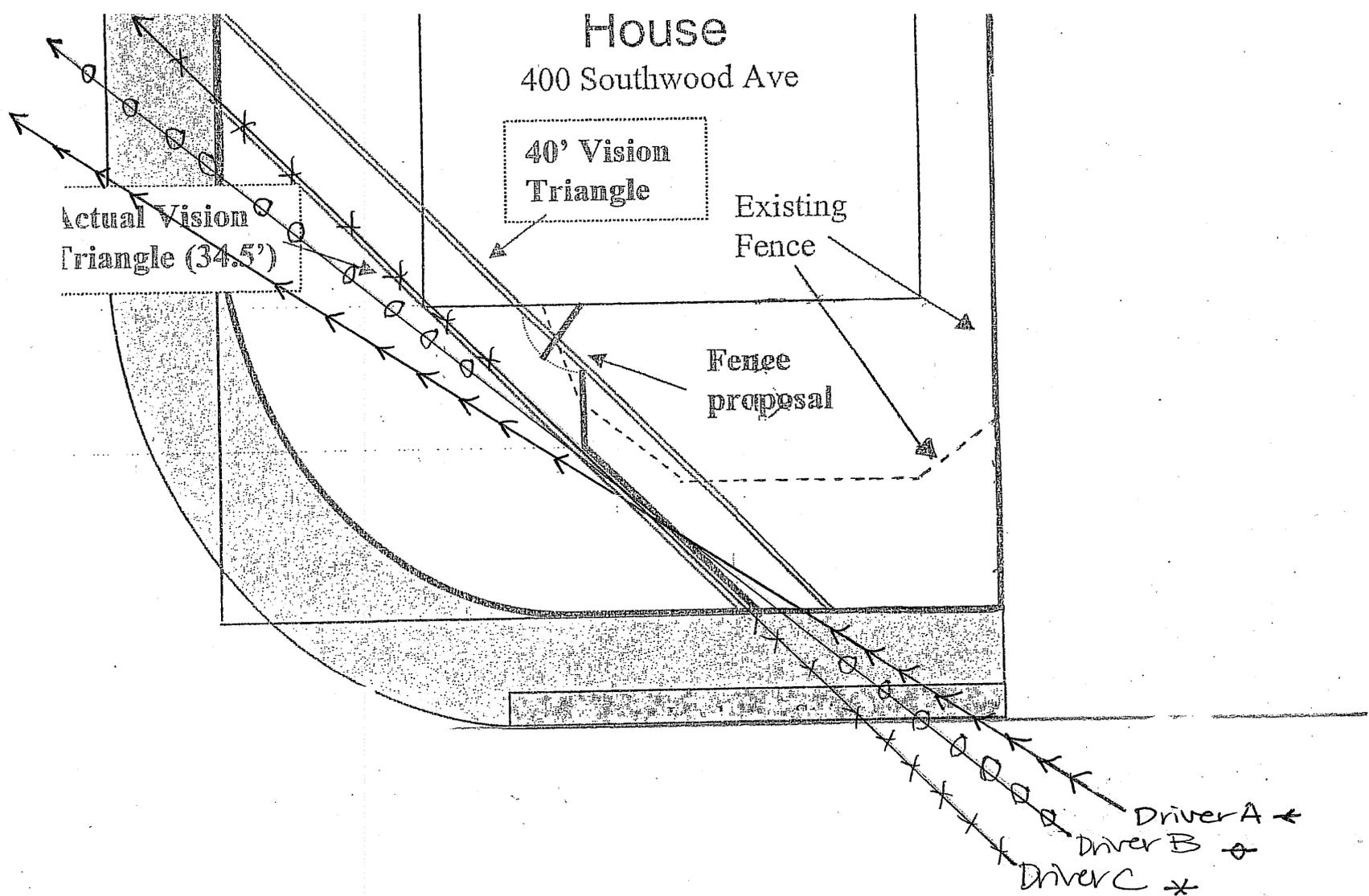


Photograph taken from Southwood Avenue showing the existing fences as viewed from the reducible front yard.

Attachment F

Illustration of Potential Traffic Impacts

SOUTHWOOD AVE.



BAYVIEW AVE

- Driver C is equally blocked by the house and the proposed fence.
- However, both Driver A and Driver B would be blocked by the proposed fence but not by the house. There are viewing angles for which the proposal further decreases visibility.