



**CITY OF SUNNYVALE
REPORT
Administrative Hearing**

October 15, 2008

SUBJECT: **2008-0938:** Application located at **1521 Flamingo Way** in an R-0 (Low-Density Residential) Zoning District.

Motion Use Permit to allow a 9' tall (for 30' of the 64.5' total rear yard width) fence in the rear yard.

REPORT IN BRIEF

Existing Site Conditions Single-Family Home

Surrounding Land Uses

North Single-Family Homes

South Single-Family Homes

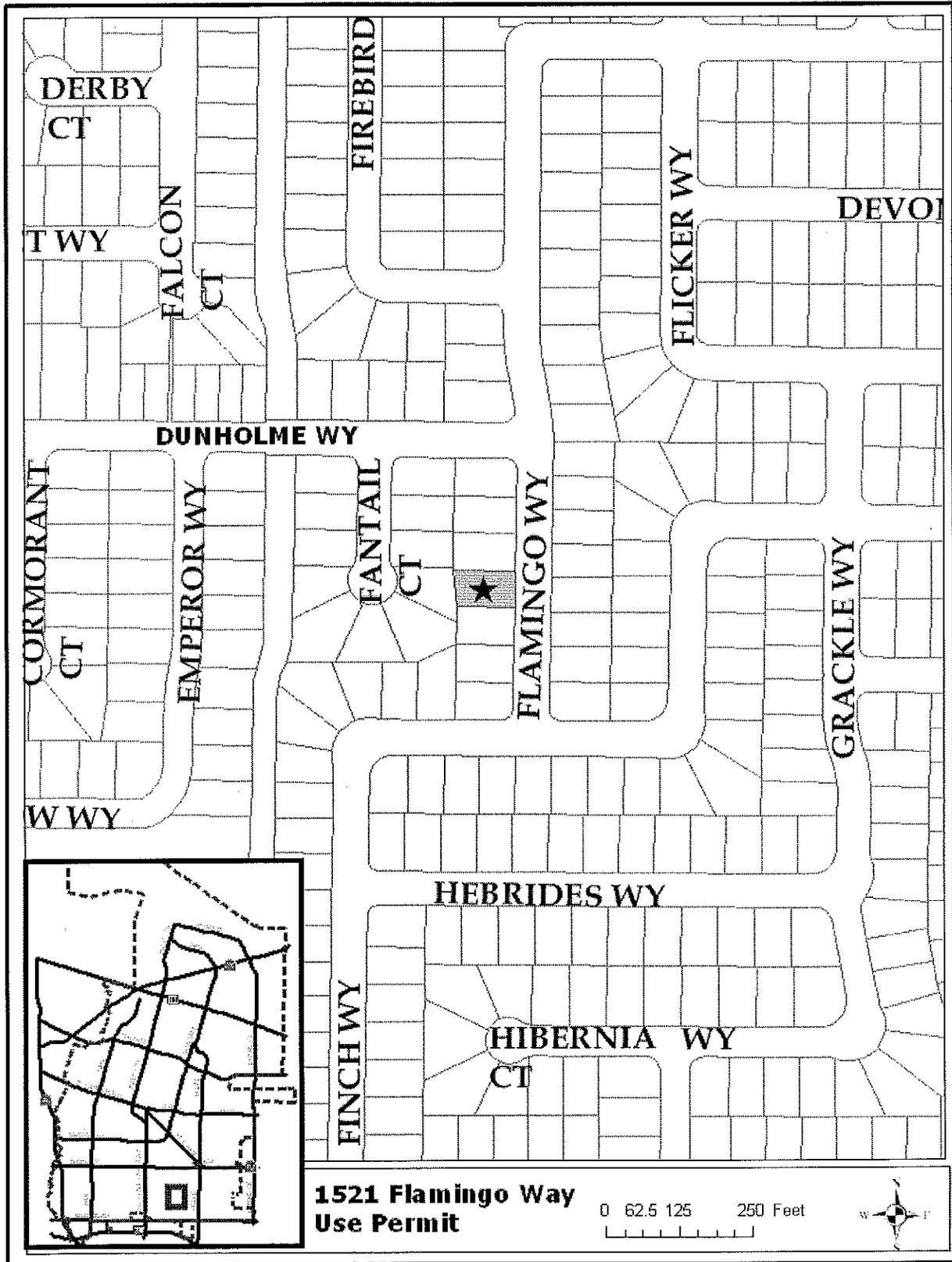
East Single-Family Homes

West Single-Family Homes

Issues Aesthetics, neighborhood compatibility

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

Staff Recommendation Deny



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.)	6,628	Same	6,000 min.
Gross Floor Area (s.f.)	2,150	Same	2,982 max.
Lot Coverage (%)	32.4%	Same	45% max. for a one-story home
Fence Height (ft.)	7' (Prior to unpermitted construction)	9'	7' max. without a Use Permit

ANALYSIS**Description of Proposed Project**

The proposed project originated as a Neighborhood Preservation complaint regarding a rear yard fence constructed without appropriate permits. The applicant added 2' of lattice along 30' of the existing 7'-tall, 64.5'-wide rear yard fence without a permit, making the fence 9' in height. The Sunnyvale Municipal Code section 19.48.020 states that fences greater than 7' in height are required to obtain a Use Permit. Therefore, the applicants request a Use Permit to allow the existing 9' tall fence along 30' of the rear yard.

Background

The subject site is located in a primarily single-family residential neighborhood and is zoned Low-Density Residential (R-0). The existing house and garage were constructed in 1962.

Neighborhood Preservation (NP) received a complaint about the unpermitted fence on August 25, 2008 from the reporting party who met with NP at the front permit counter. No compliance letter was sent by NP to the applicants because the applicants came to apply for a permit the next day, thereby meeting NP's compliance requirements.

Previous Actions on the Site: There are no previous planning actions 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 structures such as fences.

Use Permit

Site Layout: The proposed project is for a recently built 2' addition to a portion of an existing 7' tall wood fence located along the rear property line between the subject property and the property directly to the rear at 1528 Fantail Court. These two properties are similar in grade, though the property to the rear has a deck approximately 1' in height that abuts approximately 10' feet of the northwestern corner of the two properties, giving that portion of the neighboring property the appearance of a change in grade. There is no signed Fence Agreement between the two properties.

The existing 7' tall fence runs the length of the 64.5' rear property line, and the 2' tall lattice addition starts near the northwest corner of the rear yard and runs 30', making only a portion of the fence 9' in height. The applicants do not propose any modifications to the remainder of the rear yard fence, or to the other property line fences, which will remain 7' tall.

Applicant Justification: The applicants state that the proposed fence would provide privacy, safety, and protect the bamboo growing on the applicants' property. The applicants also state that their neighbor to the rear (and possibly other unknown persons) are entering their rear yard and cutting and killing their bamboo, that the rear neighbor sometimes stands on a stepladder that makes the fence separating the two yards seem to be less than 4' in height, and that a few years ago another neighbor was robbed by someone who entered from the rear yard. The applicants also assert the neighbor's view is not altered by the addition to the fence because the rear neighbor has some trees that are taller than even the 9' portion of the fence.

However, staff believes that it is clear from photos that the applicants' bamboo is also taller than the fence, which means that the bamboo is already providing a measure of additional privacy. Also, the on-going dispute between the neighbors about their landscaping is a civil matter and not a matter for the Planning Division to settle. Staff did not see evidence of a neighborhood character towards fences taller than the existing 7' fence. The applicants provided photos of two properties in their neighborhood that they claim also have 9' fences, but two properties is not enough evidence to establish the character of a neighborhood. Also, neither of those two properties has received permits for fences over 6' in height.

Fence Design: The proposed fence design consists of existing 7'-tall solid wood board that runs all 64.5' of the rear yard, and an addition of 2' of lattice, for a total fence height of 9', for a 30'-long portion of the fence. The general proposed design of solid wood board with an upper portion of lattice is compatible with a design that is commonly approved for Sunnyvale fences, and is specified as a preferred design in the Sunnyvale Single Family Home Design Techniques. However, the 9' height is significantly taller than the standard residential fence height of 6'.

Staff believes that the 9' fence is too tall. It goes against the character of this neighborhood where no other fences in the immediate area match this height. Additionally, the existing landscaping of bamboo already provides a degree of privacy screening between the yards. Also, the design of only a portion of the fence being 2' taller than the rest of the fence does not provide a uniformity of design. Staff would prefer that the entire rear yard fence be at one height.

Landscaping: No landscaping or trees were removed as part of the installation of the additional 2' lattice portion of the fence.

Compliance with Development Standards/Guidelines: Fences greater than 7' tall along the rear property lines require a Use Permit. All other applicable development and Zoning standards are met. A building permit is also required for any fences exceeding 6' in height.

Sunnyvale's Single Family Home Design Techniques state the following:

... when privacy is at issue, fences should be constructed of wood up to a maximum height of six feet with at least the top twelve inches constructed of wood lattice to soften the visual appearance of the fence top. (item 3.11.G).

The solid wood portion of the existing fence is 7' in height, which is already 1' taller than what the design techniques recommend. In addition, the new portion of the fence is a wood lattice feature that adds an additional 2' of height along approximately half of the fence length. Though the basic materials match those suggested by the guidelines, the overall height is 3' taller than recommended. The proposed uneven height also lacks uniformity and provides an uneven visual appearance. Therefore, staff finds that the fence design does not meet the Single Family Home Design Techniques.

Expected Impact on the Surroundings: The proposed fence is located along a shared rear property line, and is not readily visible from the street frontage, as it is located over 100' from the front property line. Therefore, staff finds that the visual impact of the fence is minimal to the streetscape. However, the fence is approximately 2' taller than adjacent fences and does not run along the entire length of the rear yard. The increase in height is not uniform, which could potentially call more attention to the fence addition. For these reasons,

the fence is therefore not in keeping with the character of the neighborhood. Staff does not believe that there is a need for a fence so tall since the property does not back up to a busy road or other land use requiring an increased level of noise or privacy protection. Staff recommends that the applicant remove the 2' lattice addition to return the rear fence to its previously existing and uniform 7' height.

Fiscal Impact

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

Public Contact

Staff received comments from the neighbor adjacent to the rear yard objecting to the 9' portion of the fence (Attachment E). The neighbor agrees that he cut the applicants' bamboo, but that was not a threat to their safety. He states that the lattice extension blocks his view and sunlight, gives the appearance of a fortress, reduces the value of his property, unduly targets his property, and does nothing to protect the applicants from crime. The neighbor also provided two photos of the new 2' lattice which show how it can be seen from their yard despite a few trees which block some of the view (included in Attachment C).

Notice of Public Hearing	Staff Report	Agenda
<ul style="list-style-type: none"> • Published in the <i>Sun</i> newspaper • Posted on the site • 11 notices mailed to property owners and residents adjacent to the project site 	<ul style="list-style-type: none"> • Posted on the City of Sunnyvale's Website • Provided at the Reference Section of the City of Sunnyvale's Public Library 	<ul style="list-style-type: none"> • Posted on the City's official notice bulletin board • City of Sunnyvale's Website

Conclusion

Findings and General Plan Goals: Staff is recommending denial for this project because the following Findings (Attachment A) could not be made.

- Unable to make findings that the project meets the Single Family Home Design Guidelines
- Unable to make Use Permit findings for the proposed fence

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: Conditions of Approval are located in Attachment B.

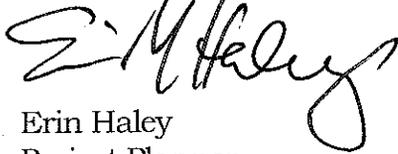
Alternatives

1. Deny requested Use Permit.
2. Approve the application with attached conditions.
3. Approve the application with modified conditions.

Recommendation

Alternative 1.

Prepared by:



Erin Haley
Project Planner

Reviewed by:



Andrew Miner
Principal Planner

Attachments:

- A. Recommended Findings
- B. Recommended Conditions of Approval
- C. Site Plan and Photos
- D. Letters from the Applicant
- E. Letter from adjacent neighbor

Recommended Findings - Use Permit

Goals and Policies that relate to this project are:

Single Family Home Design Techniques - 3.11.G - ... *when privacy is at issue, fences should be constructed of wood up to a maximum height of six feet with at least the top twelve inches constructed of wood lattice to soften the visual appearance of the fence top. .*

Land Use and Transportation Action Statement - N1.1.1 - *Limit the intrusion of incompatible uses and inappropriate development into city neighborhoods.*

1. The proposed use attains the objectives and purposes of the General Plan of the City of Sunnyvale as the project provides the property owners sufficient privacy without compromising the aesthetics of the neighborhood. *[Finding not made]*

Staff analysis indicates that the property owners already had sufficient privacy with their existing 7' tall fence. Also, the cultivated landscaping (bamboo) provides additional screening of a large portion of their yard. Photos show that this landscaping is quite tall and dense (Attachment C). The character of this neighborhood is for uniform 7' fences. Staff believes that the proposed development of having a section of fence extend to a height of 9' would be an inappropriate intrusion into this neighborhood.

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 made]*

Staff believes that this project would disrupt the orderly development of the adjacent properties by extending a section of fence to a significant height above all other fences in the area. Though the fence is along the rear property line and does not affect the streetscape, the immediately adjacent neighbors can clearly see the very tall addition to the fence, which gives a fortress-like appearance. Another factor is that the lattice only runs along a portion of the fence, which gives the rear yard property line an uneven appearance.

Recommended Conditions of Approval - Use Permit

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:

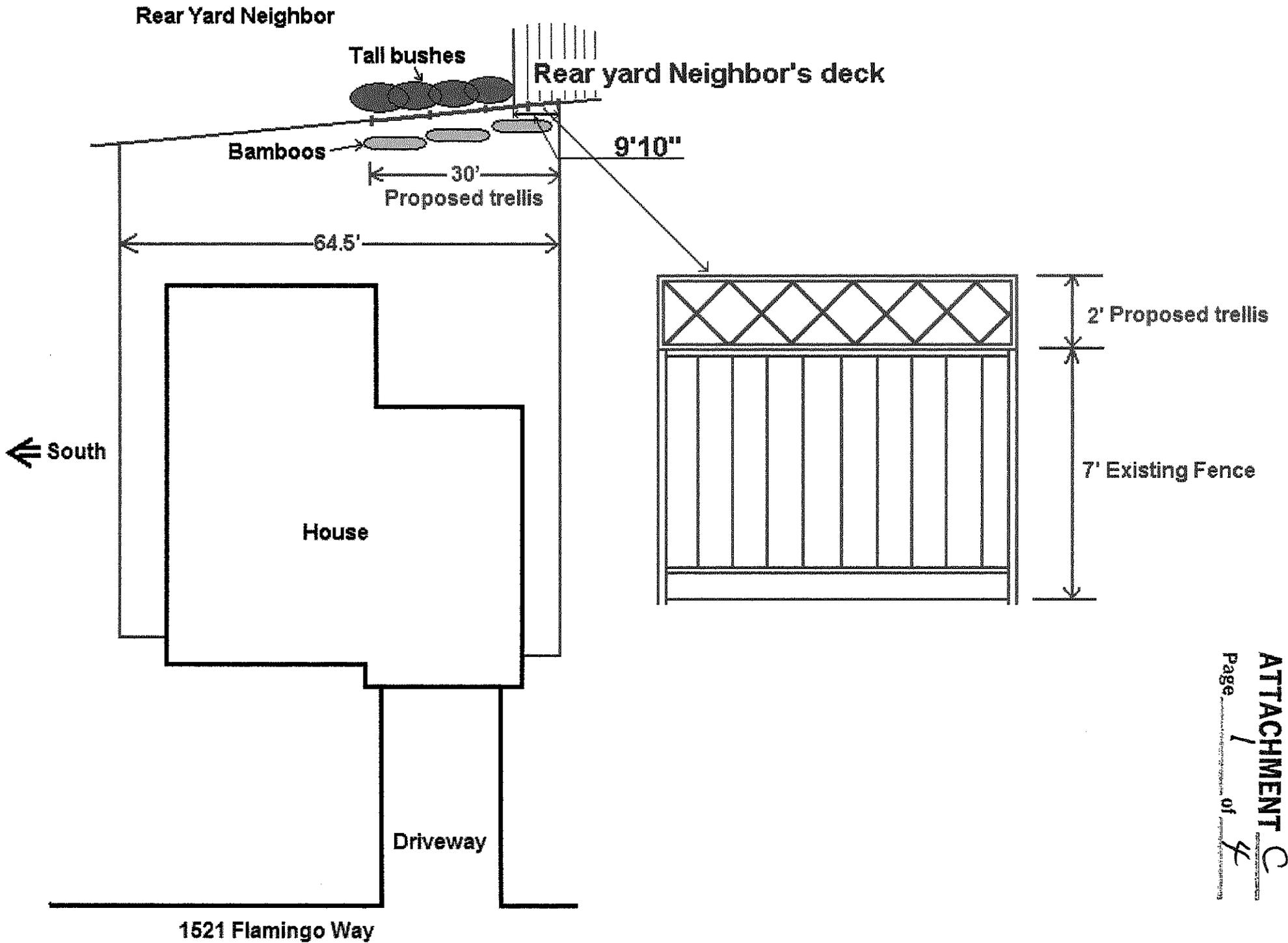
Unless otherwise noted, all conditions shall be subject to the review of approval of the Director of Community Development.

1. GENERAL CONDITIONS

- A. 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 an Administrative Hearing.
- B. Any major site and architectural plan modifications shall be treated as an amendment of the original approval and shall be subject to approval at a public hearing except that minor changes of the approved plans may be approved by staff level by the Director of Community Development.
- C. Submit an application for a building permit within 30 days of the Use Permit decision.
- D. The Use Permit 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 and is approved by the Director of Community Development.

2. Fence

- A. The fence shall be a uniform height across the entire length of the rear yard.
- B. The fence addition shall be painted to match the existing fence.
- C. The fence shall not exceed a height of 8'.



Bo back yard

ATTACHMENT 4

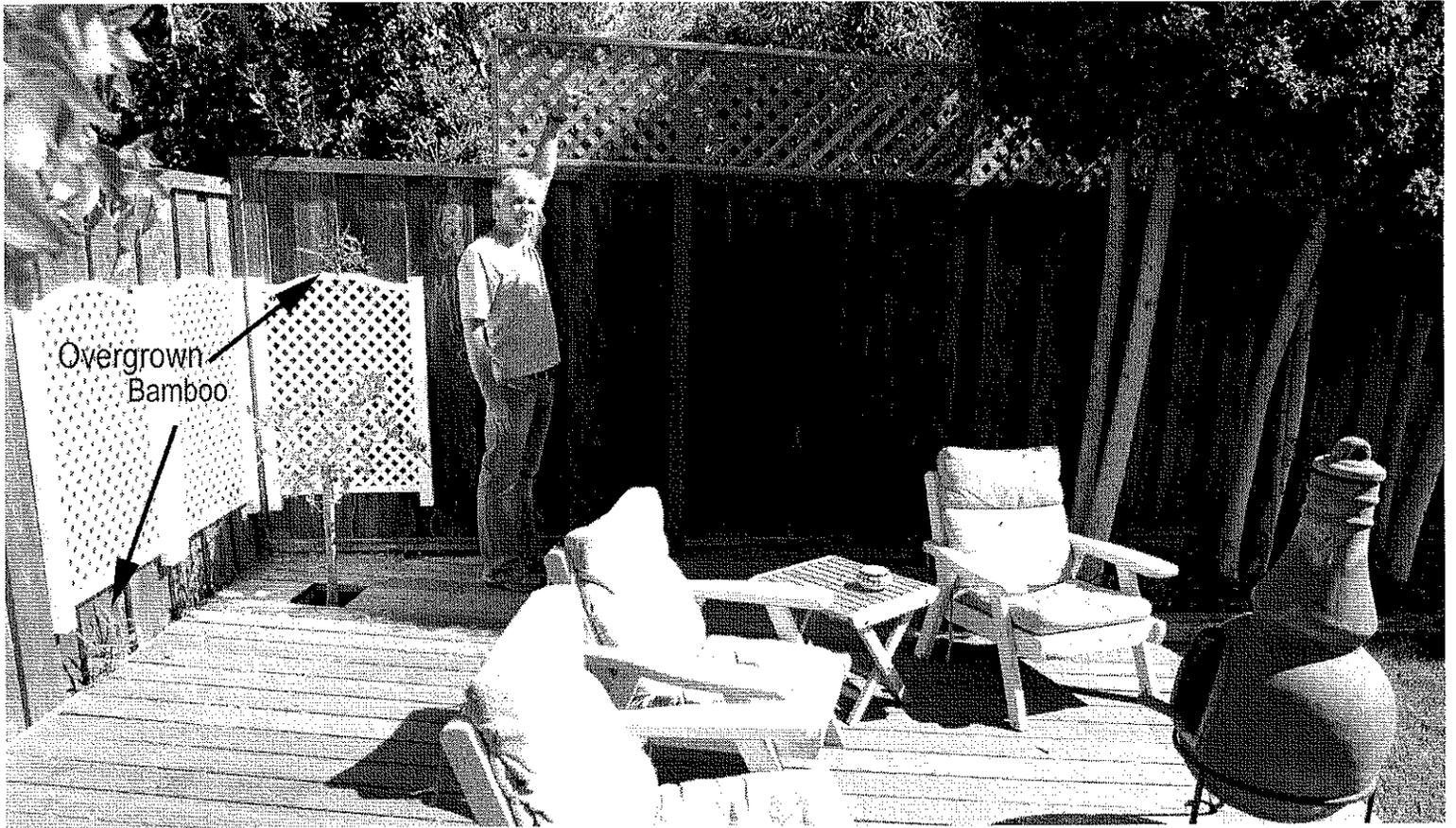
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Page

trellis are covered by rear yard neighbor's tall bushes

rear yard neighbor deck area 9'10"







Mr. Cheng's
bamboo
are very healthy

Property address: 1521 Flamingo Way
Owners/Applicants: Bo Cheng/Ruo Zhang
Reside at property address

Date: 8/27/2008

USE PERMIT – City of Sunnyvale – Fence higher than 7’ justification

The Sunnyvale Municipal Code requires that at least one of the following two justifications must be met in order to approve a Use Permit Application. 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.*
- 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*

Owner Statement

1. To the best of my knowledge this Use Permit Application does not deviate from the objectives and purposes of the General Plan of the City of Sunnyvale.
2. We are requesting permission to add this 2’ tall Trellis on an existing 7’ tall fence in the rear yard for the following reason:

Our Beagle had been unusually often barking towards the northwest corner of the rear yard for weeks. Last Friday I did a detailed check and was shocked to find that around 59 pieces of bamboos had been cut to the fence height by someone cross over the fence. 32 have completely died (see photo on Page 2), and 27 are dying (see Page 3 & 4 with the pink ribbons). These bamboos have been living there for more than 10 years, which gives us not only a wonderful view, but also a good protection for our privacy and safety. After removing the dead ones, we noticed a huge hole at that corner of the yard (see Page 5), which raises great concern for our privacy and safety. A few years ago, one of our neighbors was robbed by a backyard break-in. Furthermore, we happened to find, through the fence gap, a stepladder on our rear yard neighbor’s deck, next to the fence at that corner (see Page 6). We really worry about this; 7’ fence actually becomes 3.8’ after reducing 0.8’ thick deck and 2.5’ high stepladder. In reality 3.8’ tall fence does not perform a fence function. Our rear yard neighbor admitted that he cut 5 pieces of our bamboo, but who did the rest 54 pieces and why? To restore the privacy, safety and to ease my family’s un-secure feeling, we are requesting for your kind permission to allow adding a 2’ tall and 30’ long Trellis on the existing rear yard fence. This Trellis would not affect our rear yard neighbor’s view because it is lower than their tall bushes.

Sincerely,

Bo Cheng 

Bo C

From: Bo C [REDACTED]
Sent: Tuesday, October 07, 2008 10:53 AM
To: 'ehaley@ci.sunnyvale.ca.us'
Cc: Ruo Yahoo [REDACTED]
Subject: RE: Regarding Use Permit application (#2008-0938)
Attachments: Bo_back_yard.JPG; proposed_fence.GIF; 1495_Flamingo_Way.JPG; 1461_Flicker_Way.JPG

Hi Erin,

Thanks for taking the time talking with us this morning. Attached below are some additional information we would like to provide you for the consideration.

- The length of rear yard neighbor's deck is about 9'10" (see the photo of bo_back_yard.jpg and updated proposed_fence.gif).
- We took two photos from our near neighborhood who also have installed tall fences (the photos are named with their addresses)
 - o 1495 Flamingo Way (9' fence)
 - o 1461 Flicker Way (9' tall)

Thanks again for your time and consideration.

Bo

From: Bo C [REDACTED]
Sent: Thursday, October 02, 2008 10:19 PM
To: 'ehaley@ci.sunnyvale.ca.us'
Cc: 'Bo C'; Ruo Yahoo ([REDACTED])
Subject: Regarding Use Permit application (#2008-0938)

Dear Erin,

Thank you very much for taking our Use Permit application (#2008-0938 permit for 9' fence in the rear yard) and putting the public notice in our front yard today.

Although we have lived at this address for more then 10 years, it is our first time to go through such a process. We would like to get your advice. If there is anything we should prepare before/during the hearing, please let's know.

Thanks again!

Bo Cheng & Ruo Zhang
1521 Flamingo Way, Sunnyvale, CA 94087
408-245-3806 (Home)
408-858-0337 (Bo's Cell)

ATTACHMENT E

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From: "Michel Billard" [REDACTED]
To: <ehaley@ci.sunnyvale.ca.us>
CC: "Christine Billard" [REDACTED]
Date: 10/7/2008 9:21 AM
Subject: File number 2008-0938
Attachments: 1.jpg; 2.jpg

Dear Erin,

I was nice meeting you yesterday.

Please let me give some background on the fundamental issues that are the basis for Mr. Cheng Use permit request. My family moved into this property in 1999. Mr. Cheng has entered our backyard without our explicit authorization on a regular basis. He did this while we were away to trim our plants to his own liking. Although my family and I were aghast by this behavior, we demonstrated flexibility and let him do this. At one point, he unilaterally decided to cut our hedge trees (referred to as "tall bushes"), by one half their size without warning. Again, we did not complain in the spirit of good neighborhood relations.

Recently, Mr. Cheng's bamboos significantly overgrew and are damaging the fence. I had told Mr. Cheng to correct the situation on two occasions. Since he did not take any action, I took initiative to carefully trim his bamboo to keep them clear from the fence. This is consistent with his philosophy of self help and can hardly be seen as a threat to his safety, yet, two weeks later, Mr. Cheng installed the lattice extension on top of our fence and claimed to be "protecting his property and his family". On picture "1.jpg" bamboo can be seen growing again in my property thru the deck and thru the fence.

I also want to point out that Mr. Cheng's dog barks every single evening at sunset which cannot be viewed as an indication that there are any malfeasant individuals in the neighborhood.

I strongly object to the lattice extension because:

- 1/ the fence is already 7 feet high
- 2/ it already blocks the view and the sunlight from my property
- 3/ it gives the appearance of a fortress and reduces the value of my property
- 4/ it unduly targets my property and will not resolve the underlying problem of the overgrowing bamboo
- 5/ it will not address the alleged burglary issues outlined by Mr. Cheng
- 6/ if Mr. Cheng is offended by my trimming the overgrown bamboo, I will gladly let him do it

ATTACHMENT E

Page 2 of 2

7/ Mr. Cheng bamboos are in very good health and growing tall (see picture 2.jpg)

Feel free to contact me for questions or comments.

Regards,

Michel Billard

