



# CITY OF SUNNYVALE REPORT ADMINISTRATIVE HEARING

July 15, 2009

**File Number:** 2009-0384

**Permit Type:** Variance

**Location:** 1004 Essex Avenue (near Garner Dr.) (APN: 110-11-001)

**Applicant/Owner:** Susan Mueller-Robb

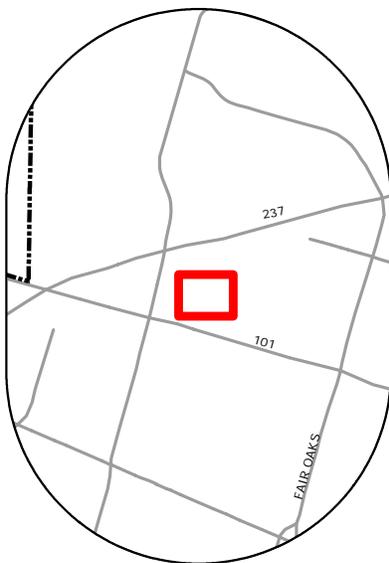
**Staff Contact:** Shaunn Mendrin, (408) 730-7429

**Project Description:** Application for a Variance from the Sunnyvale Municipal Code section 19.48.020 to allow a 4' front yard fence in the driveway vision triangle, subject to modifications as noted in the Conditions of Approval.

**Reason for Permit:** A **Variance** is required for fences that exceed 3' in height within the driveway vision triangle.

**Issues:** Safety and Aesthetics

**Recommendation:** Approve Variance with Modifications to reduce the height of the fence panels along the front property line to 3' and allowing three fence posts to remain at 4' within the driveway vision triangle.



500

Feet

**PROJECT DESCRIPTION**

	<b>Existing</b>	<b>Proposed</b>
General Plan:	Residential Low Density	Same
Zoning District:	R-0	Same
Fence Height:	4'	Same

<b>Previous Planning Projects related to Subject Application</b>	<b>No</b>
<b>Neighborhood Preservation Complaints</b>	<b>No</b>
<b>Deviations from Standard Zoning Requirements</b> The applicant is requesting a variance to allow an existing 4 foot fence within the driveway vision triangle.	<b>Yes</b>

**Background:** The subject property is located within the Orchard Gardens neighborhood, which contains a mixture of fence types, including wood, chain link and wrought iron. The fence was constructed without permit approximately 22 years ago. The applicant received a courtesy notice from Neighborhood Preservation regarding the existing fence. Subsequently, the owner submitted a variance application to legalize it.

**Proposed Fence:** The existing fence is located within the required front yard and extends the width of the property. The fence is constructed of black wrought iron and is 4' tall. The wrought iron slats are approximately 1/2" wide with 2" spacing. Therefore, the fence is more than 50% open. The section of fence that spans the driveway is retractable and folds either to the left or the right of the driveway (see Attachment B). The section folding in to the left can be moved generally out of the driveway vision triangle. The section folding to the right, near the pedestrian gate, can be moved, but a remainder of the fence is still located within the driveway vision triangle (approximately 9'). See Staff Recommended Modification discussion below.

**Driveway Vision Triangle / Safety:** SMC 19.34.060 requires that 10-foot driveway vision triangles be maintained clear of obstructions over 3' high. A driveway vision triangle is defined in SMC 19.12 as "the triangle area created by a line connecting points along the back edge of a public sidewalk and out edge of a driveway, which points are established 10' distant from the intersection of the back edge of the sidewalk and the outer edge of the driveway." The intent of this requirement is to promote safety and reduce the potential for accidents and injury by providing drivers a better view of pedestrian, bicycle, and vehicular traffic while backing out from the driveway.

Two portions of the fence are located within the driveway vision triangles (as noted above). The left section can generally be moved out of the vision triangle,

this in combination with the openness of the fence, allow adequate visibility. The section folding to the right only moves a slight portion of the fence out of the driveway vision triangle. A large section, approximately 9' remains within the vision triangle and it may possibly impede visibility at certain points. As noted above, the fence is more than 50% open; however, the Sunnyvale Municipal Code does not currently provide flexible requirements for vision triangles based on fence materials uses. Instead, requirements are based on total height.

**Staff Recommended Fence Modification:** Section 19.34.060 also allows trees to be located within the vision triangle as long as the bottom 3' is pruned clear. Staff met with the applicant to discuss options to address the issue. The only feasible option for the applicant to retain fencing would require that adjustments be made to lower the panels to 3'. The applicant is concerned about adjusting the height of the posts, as two are quite thick and needed to support the weight of the driveway gates. Since this section of the code does essentially allow a tree trunk(s) to be located within the vision triangle, staff is recommending approval of the variance application requiring the reduction of the panels to 3' and allowing three posts to remain at 4' with the driveway vision triangle.

**Public Contact:** 17 notices were sent to surrounding property owners and residents adjacent to subject site in addition to standard noticing practice. No letters in opposition were received. The applicant has provided letters in support of the variance request (see Attachment D).

**Environmental Determination:** A Categorical Exemption Class 1 (minor alterations to existing facilities) relieves this project from CEQA provisions.

## **FINDINGS**

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In order to approve the Variance all of the following findings must be made:

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, **and**

Staff is recommending approval of the variance subject to the fence panels being lowered to 3' in height along the front of the property. This will allow for ample visibility and safety for access to the site. In addition, staff is recommending that the 4' fence posts be allowed to remain within the driveway vision triangle as they will cause no more

interference than a tree trunk. There will be a total of three posts located within the driveway vision triangle. The Zoning Code does allow for trees to be located within the vision triangle and the remaining posts will act as such in this case. The posts, which are narrow in width, will remain the same size and not impede visibility, although a variance will be required to the posts to remain. The modifications proposed will allow the property owner to enjoy fencing similar to that found in the neighborhood.

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, **and**

Granting of the variance will not be detrimental to the public welfare since the height of the panels can be adjusted down to 3' in height, with the exception of the posts. The adjusted fence panels will allow for ample visibility for access to the subject site.

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.

Granting of the variance will not be granting the applicant special privileges since the fence will be adjusted to 3' in height, with the exception of the posts which, as noted above, would be similar to a tree trunk which is allowed within the vision triangle. It is also important to note that a post is generally smaller than a column.

**Staff was able to make the variance findings noted above.**

#### **ALTERNATIVES:**

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1. Approve the Variance with additional modifications.
2. Deny the Variance.

#### **RECOMMENDATION**

Alternative 1. Approve the Variance subject to the modifications in Condition of Approval #1.

Reviewed by:  
**Steve Lynch**  
Senior Planner

Prepared By: Shaunn Mendrin, Senior Planner

Attachments:

- A. Standard Requirements and Recommended Conditions of Approval (if approved)
- B. Site Plan and Photos
- C. Variance Finding from the Applicant
- D. Letters in Support of the Variance Request

### **Standard Requirements**

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

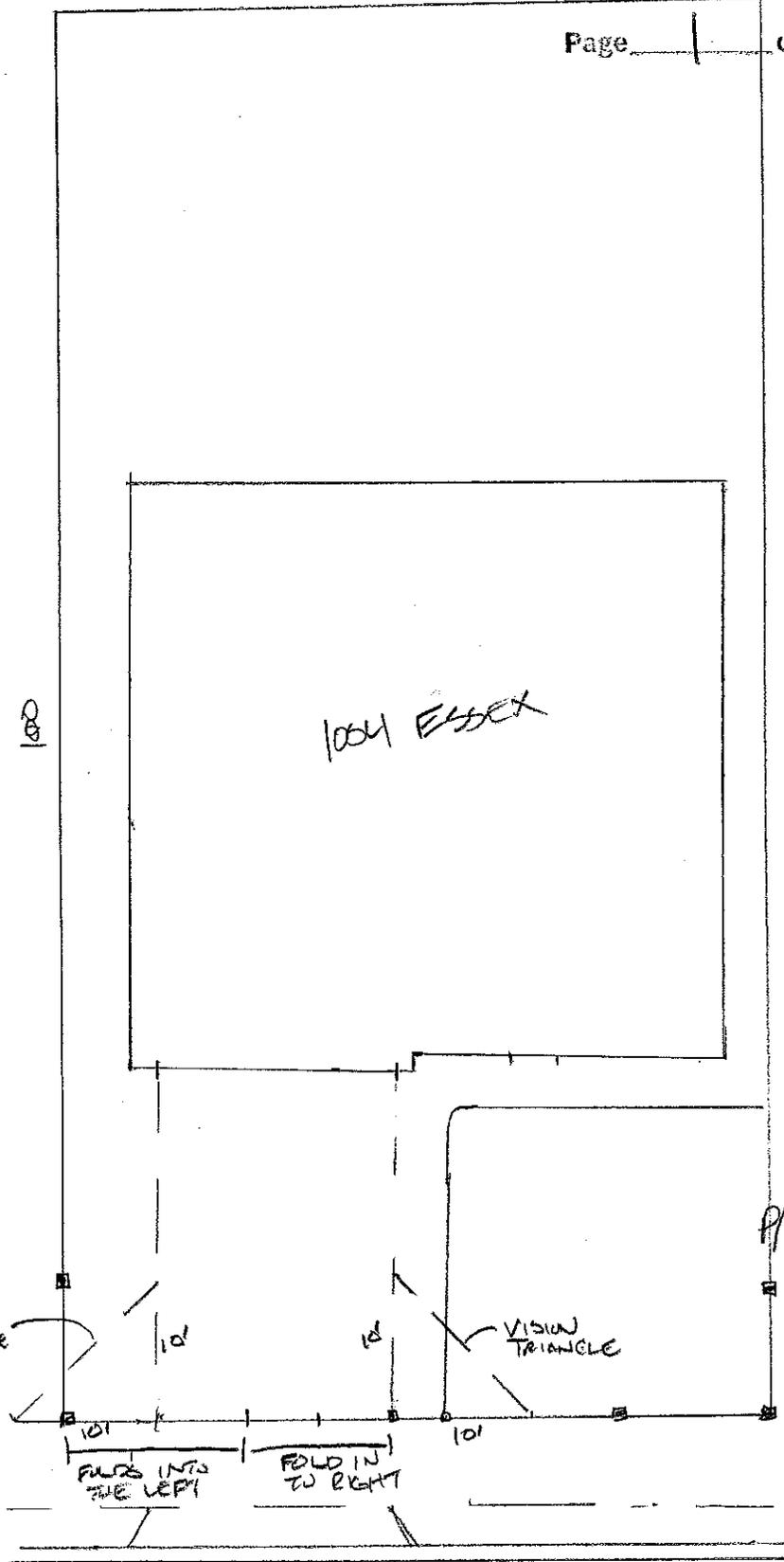
- A. **Permit Expiration:** The Variance for the use shall expire if the use is discontinued for a period of one year or more.
- B. **Permit Lapse if not Exercised:** The Variance shall be null and void two years from the date of approval by the final review authority at a public hearing if the approval is not exercised, unless a written request for an extension is received prior to expiration date and is approved by the Director of Community Development.

### **Recommended Conditions of Approval**

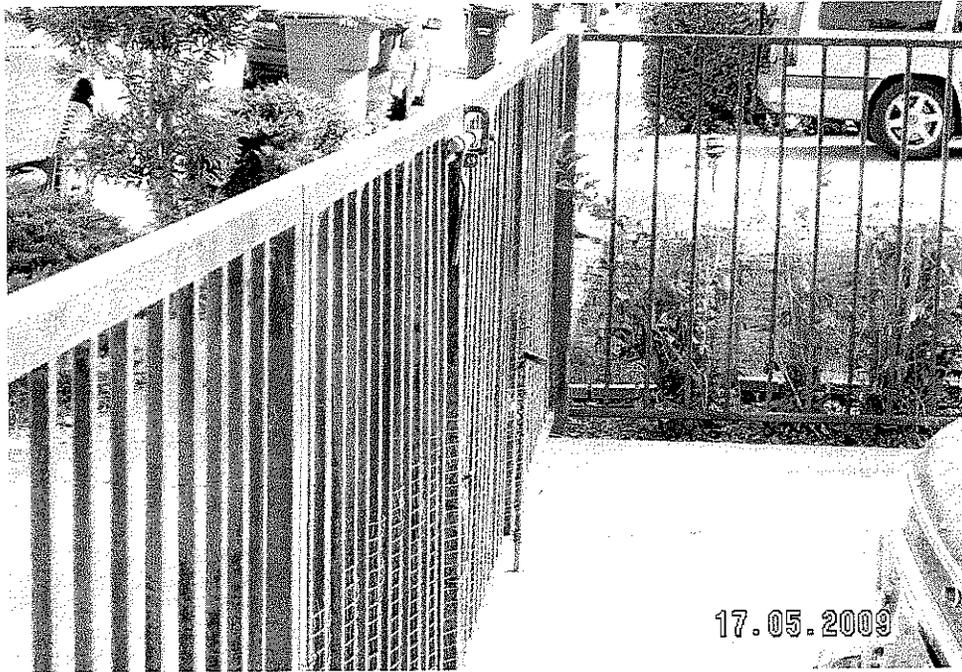
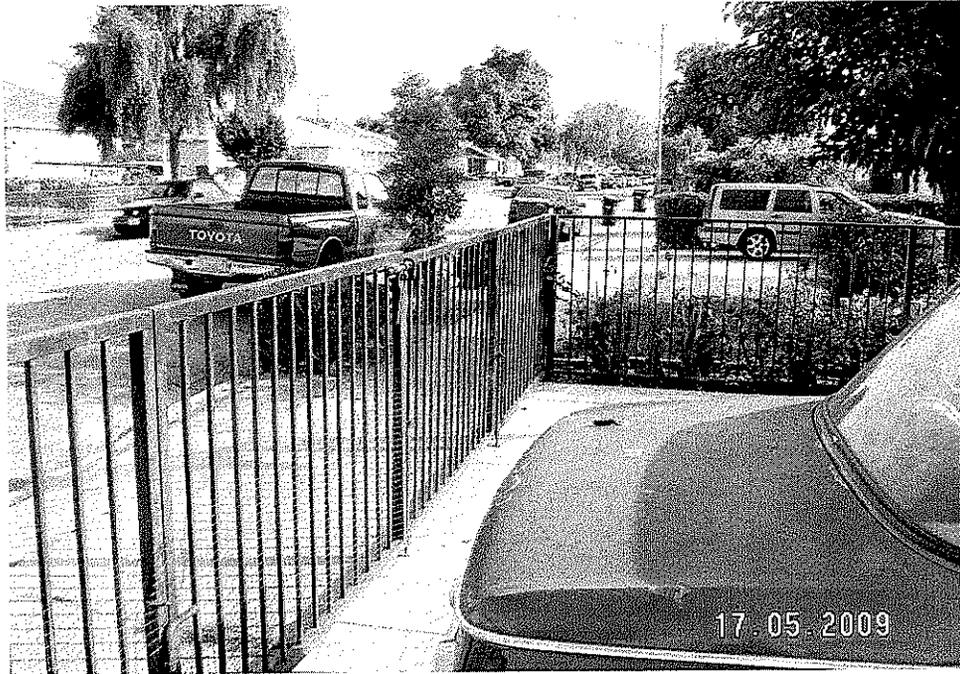
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In addition to complying with all applicable City, County, State and Federal Statutes, Codes, Ordinances, Resolutions and Regulations, Permittee expressly accepts and agrees to comply with the following conditions of approval of this Permit:

- 1. **Fence Modifications:** The existing fence shall be modified as follows:
  - a. Fence panels shall be lowered to a maximum height of 3' and three posts may remain at 4' within the driveway vision triangle.



5/18/09



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1004 Essex Ave Sunnyvale



# VARIANCE JUSTIFICATIONS

ATTACHMENT C

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.

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.

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.

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

Question 1.

Our property was purchased in 1980. We started a family in 1985, our daughter, Colleen, came. She became deathly ill and needed a reason for her to want to be with us, her request was a certain type dog, a Brittney Spaniel. So we went to rescue, where we took the dog for a low price. We later had been told the dog jumped 6 foot fences and other high ones. We learned the hard way the reason why Freckles was given up. The dog jumps out of our kitchen window and roams the neighborhood; he is not fond of men. Enclosed are signed letters from neighbors as to how happy they are to see our solution. The Orchard Gardens Park, a favorite spot for dogs and folks, so to keep the dogs from hurting someone the fence went up. It had to look nice and in no way give the dog a footing to leap from, that is why the pool type and the height over 3 feet. We have since gone and again rescued dogs, our present dog also jumps, pound dogs come with no grantees. With the addition of netting at the base to keep the small dogs from going through we have had peace of mind in our area. No liability insurance claims were or are ever needed against our home owners insurance if the fence remains.

I can not KILL our dog nor do I want it hit by a car for this is a family member that gives us LOVE.

Question 2,

This fence has been on the property for 22 years. No one has been hurt by it being here nor has the fence hurt the property. Our neighbors are in agreement as to the reason to the height, they would prefer it to remain and see no reason why it can't for the safety of all.

1004 Essex Ave Sunnyvale

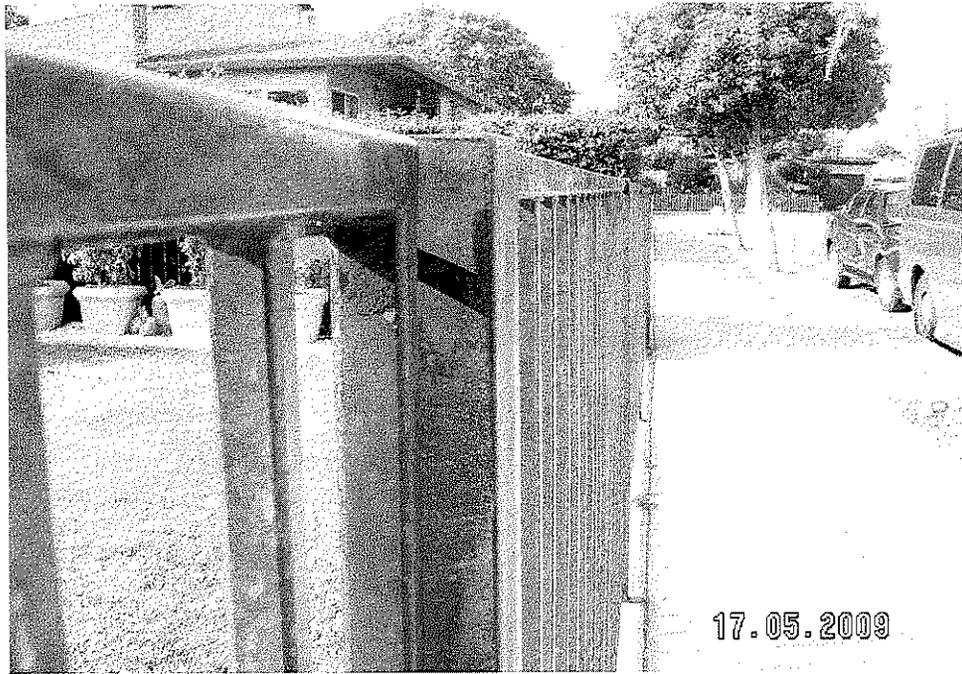
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ATTACHMENT C  
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Question 3,

The granting of this variance at 1004 Essex Avenue allows other property owners who have dogs that jump fences to realize there is a solution available. Keeping the neighborhood safe plus the property owner from a liability suit, so those dogs and owners that pass by their house are not chased after by the owners' dog that leaped the fence, which is always scary when you don't expect a fight or chase to happen. I know from personal experience one to many times.

5/18/09



Please grant our  
Variance justification  
Request at 1004 Essex  
Ave

Thank you  
Mr. & Mrs. Miller-Rob

P.S.  
Our neighbors all  
agree with the  
look and presence of  
the fence -  
as seen by  
signed statements

ATTACHMENT C  
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For 1004 Essex Ave Summer

ATTACHMENT D

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To the Variance Justifications Panel

My neighbor showed me the letter about their fence height. I have no complaint at all as to the height along my side yard or the way the fence height is. It has been that way for over 20 years when they asked me about it to be built.

Thank you

*Maria Zherington*

1006 Essex Ave. owner

FOR 1004 Essex Ave Sun. nyvale

ATTACHMENT 0

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To whom it may concern,

We live at 1001 Essex Avenue, our neighbor's fence that is in question that of 1004 Essex Avenue is not and has not been a problem to us. The height and location from our view is fine for the past 20 plus years. The fence has been keeping their kids and animals in the yard, they do have a jumper. We help them when the dogs get out by the mailman leaving the gate open or the meter reader. Please leave the fence as is.

BEST REGARDS

Norman Brown

For 1074 Essex Ave Se my vote D

Page 2 of 5

To the panel on variance justification,

We live at 1003 Essex Ave., right across the street from 1004 Essex Ave. the fence in question is doing a fine job keeping their animals in their yard. The height of the fence across the street does not bother us and we do not see any reason for it to be removed.

Thank you for your time

Laurel Torres

Rosa Barbosa

Luz Deras

For 1004 Essex Ave. Community

ATTACHMENT D  
S

I want to say keep that dog safe and at home, we think the height of the fence on 1004 Essex Ave. has been keeping the dogs where they belong. Don't make them lower it or worse yet remove it. I live at 219 Garner Dr.. The dog does not come to the park with out the owner now.

Thank You for hearing my thoughts

I am ok with it. No complains - ~~A. Sabiney~~

For 1004 Essex Ave Summit  
ATTACHMENT D

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I am Chuck Cegelski and my wife Carol, we live next to the Orchard Gardens Parks, our neighbor at 1004 Essex Ave. did all of us a favor when the fence was done and has remained as it is. Their dog stays in their yard not at the park as it had not before they placed the fence, the dog would jump out their kitchen window and be off to the park. Let them keep the fence as is. No one is harmed and it does keep us safe from stray wondering animals.

Respectfully

Chuck & Carol Cegelski