



**CITY OF SUNNYVALE
REPORT
Planning Commission**

January 14, 2008

SUBJECT: **2007-0724:** Application located at **1005 Lakehaven Drive** (Near Lawrence Expwy.) in an R-0 (Low Density Residential) Zoning District. (APN: 110-23-052)

Motion Appeal of a decision by the Director of Community Development denying a Miscellaneous Plan Permit to allow a four foot wood fence located in front yard;

Motion Variance from Sunnyvale Municipal Code section 19.34.060 to allow a fence greater than three feet in height a driveway vision triangle.

REPORT IN BRIEF

Existing Site Conditions Single-Family Residence

Surrounding Land Uses

North Hetch-Hetchy Right-of-Way

South Single-Family Residence

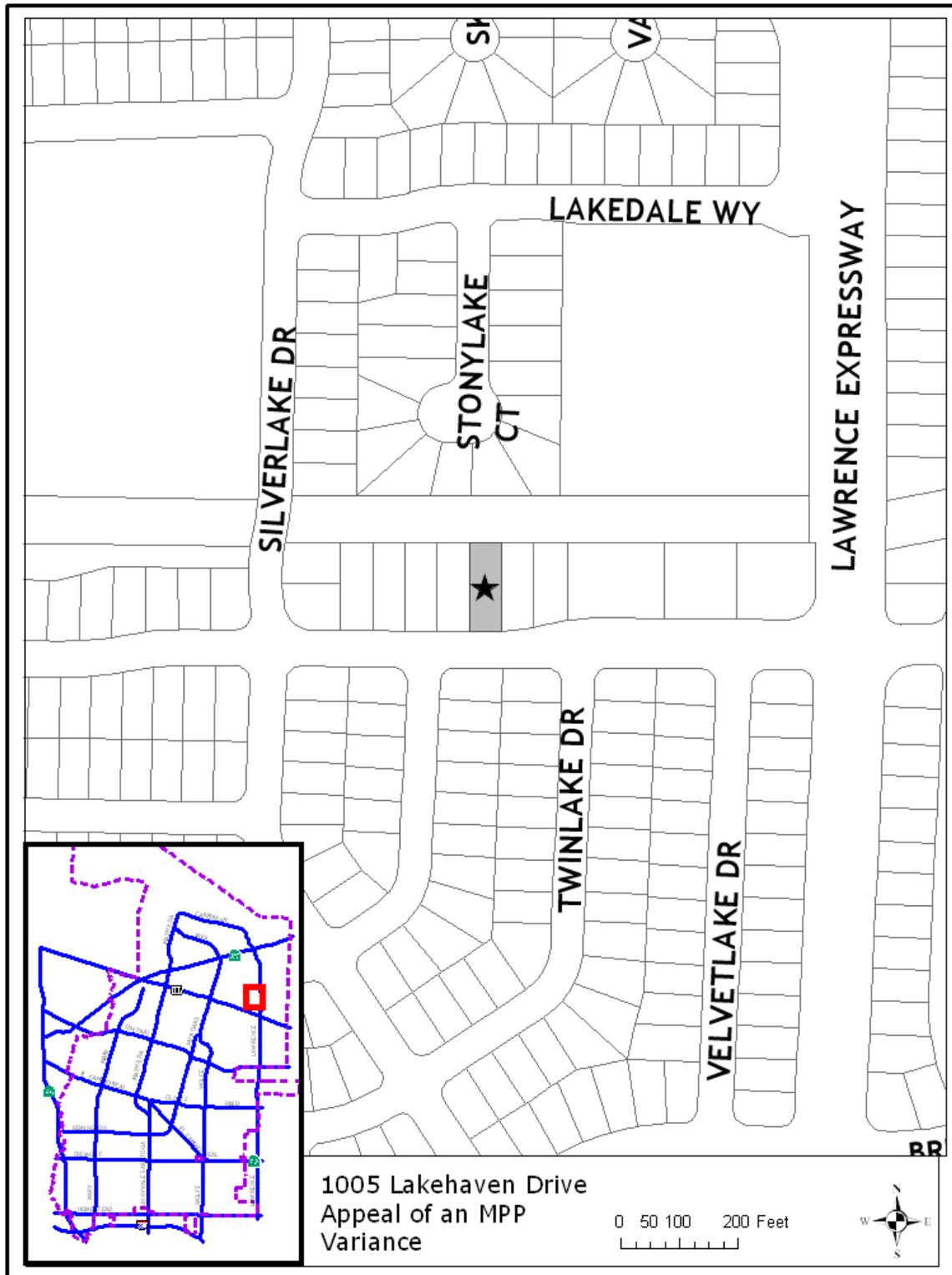
East Single-Family Residence

West Single-Family Residence

Issues Aesthetics and safety

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

Staff Recommendation Deny the appeal and uphold the decision of the Director of Community Development to deny the Miscellaneous Plan Permit, and deny the Variance.



PROJECT DATA TABLE

	EXISTING	PROPOSED	REQUIRED/ PERMITTED
General Plan	Low Density Residential	Same	Low Density Residential
Zoning District	R-0	Same	R-0
Lot Size (s.f.)	8,250	Same	6,000 min.
Gross Floor Area (s.f.)	1,468	Same	3,712 max. without PC review
Lot Coverage (%)	17.8%	Same	40% max.
Floor Area Ratio (FAR)	17.8%	Same	45% max. without PC review
★ Fence Height (ft.)	N/A	4'	3' max. within corner vision triangle
Parking			
Total Spaces	4	Same	4 min.
Covered Spaces	2	Same	2 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 a 4-foot tall picket fence was constructed in the required front yard without appropriate permits. A Miscellaneous Plan Permit (MPP) is required for all fences up to 6 feet tall in the required front yard of residential properties. In response to the complaint, the applicant submitted an application for a MPP to request approval of the existing fence.

Staff had concerns regarding the height of the fence, the driveway gate design and portions of the fence located within the driveway vision triangle. Therefore, staff denied the MPP application. The applicant has since appealed the decision to the Planning Commission. A Variance is also required to allow the 4-foot tall fence in a driveway vision triangle, where 3 feet is the maximum permitted in the Sunnyvale Municipal Code section 19.48.020.

Background

On July 10, 2007, the property owner applied for a Miscellaneous Plan Permit for a 4-foot tall wood fence located in the front yard of a single-family residence. Planning Division staff visited the site and found that a portion of the fence was located in a driveway vision triangle. Fences in a vision triangle require a Variance and cannot be approved through the Miscellaneous Plan Permit process. Planning Division staff also had concerns regarding the overall height of the fence, as well as the portion of the fence that runs along the driveway (driveway gate).

Planning staff contacted the property owners and suggested they reduce the height of the proposed fence to no more than 3 feet to resolve the vision triangle and height concerns. Staff also advised the property owners to modify the driveway gate to be electronic in order to avoid vehicles queuing in the public right-of-way. The applicant has attempted to address staff's concerns. The original driveway gate used to swing open onto the public right-of-way, but has since been modified to open onto the property. The height and location of the fence were not modified. Therefore, staff denied the MPP application on October 26, 2007 (Attachment E, MPP Decision Letter).

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.

Miscellaneous Plan Permit and Variance

Use: The applicant proposes a 4-foot tall fence in the front yard. The applicant has stated that the intent of the fence is for privacy and security.

Site Layout: The existing fence runs along the front and side property lines, and is located in the first 20 feet of the property (required front yard area). A portion of this fence also runs along the existing driveway. This fence encloses the front yard and driveway areas, and connects to the existing 6-foot tall side yard fences. The applicant proposes to maintain the fence in its current location (Attachment C, Site and Architectural Plans).

Fence Design: The subject property is located within Lakewood Village, which contains a mixture of fence types, including wood, chain link, brick and concrete. The existing fence has been designed as a wooden picket fence, and is similar in design as other fences found in the neighborhood.

The existing neighborhood also contains other fences that are more than 3 feet in height. However, these existing fences may have been approved or built under prior code requirements or built without permits. The table below shows permits that have been recently obtained for front yard fences located in the immediate neighborhood.

Address	Project Description	Decision	Date
1254 Sandia	4'-6" tall concrete and wrought iron fence located in the required front yard	Approved, subject to reducing the height to 3' maximum	2/27/07
1368 Socorro	4' tall brick and wrought iron fence located in the required front yard	Approved, subject to reducing the height to 3' maximum	10/30/06

Therefore, precedent has been set to require that existing fences be brought into compliance with current code requirements and Single Family Home Design Techniques.

The following Guidelines were considered in the analysis of the fence design.

Single Family Home Design Techniques	Comments
<i>3.11 (G) Fencing along the front property lines and along side property lines within front yard setback areas should not exceed three feet in height.</i>	The applicant is proposing a 4-foot tall fence in the front yard area. Therefore, the proposed project is inconsistent with this guideline.

Driveway Vision Triangle and Safety: SMC 9.34.060 requires that 10-foot driveway vision triangles be maintained clear of obstruction over 3 feet 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 feet 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.

A portion of the 4-foot tall fence is located within the driveway vision triangle. Although the fence has been designed to be a picket fence, the wooden slats are greater than 2.5 inches in width and were constructed to be approximately 2 inches apart. Therefore, the fence is more than 50% solid. 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.

Although the fence is not solid, staff believes that the visibility of vehicles may still be obstructed with the existing picket fence. Staff consulted with the Traffic Division, who indicated that the fence can appear to be solid at specific angles when a vehicle is backing out of the driveway. Therefore, the limited visibility of vehicles backing out from the driveway poses a safety concern and is inconsistent with the intent of the vision triangle requirement.

Driveway Gate and Circulation: The existing driveway gate is an extension of the existing fence, and runs along the front property line. The gate encloses the two uncovered parking spaces on the driveway and includes a manual latch. While the original gate used to open onto the public right-of-way, the applicant has modified it to swing open onto the property.

It has been the City's practice to require driveway gates to be electronic to ensure that driveways can be effectively used as parking spaces and to avoid vehicles queuing in the public right-of-way. Therefore, if the project is approved, staff recommends that the gate be modified to be an electronic gate (Attachment B, Recommended Conditions of Approval). Other alternatives include requiring that the gates remain open at all times, or be removed to reduce the ability of the gates to be enclosed.

Compliance with Development Standards/Guidelines: The proposed 4-foot fence does not comply with the required 10-foot driveway vision triangle. Only fences 3 feet or less are allowed in the vision triangle area. Although the existing fence is not solid, the visibility of vehicles backing out of the driveway is still limited and conflict's with the intent of this requirement to promote safety. In addition, the existing fence is inconsistent with the Single Family Home Design Techniques which states that front yard fences not exceed a height of 3 feet.

Applicant's Appeal and Justifications: The applicant's appeal letter states the following (Attachment D, Letter from the Applicant):

1. There is a significant amount of traffic along Lakehaven Drive, which creates a hazard for children playing in the front yard.
2. The fence is made of open wood slats, which does not significantly block the visibility of vehicles and pedestrians.
3. There are other homes in the neighborhood with fences that that greater than 3 feet in height.
4. Adjacent neighbors do not find the fence to be visually offensive or block visibility.

Staff Discussion of Appeal and Variance Findings: Planning Division staff examined the issues presented by the appellant, as well as the required Variance findings and notes the following:

1. The first required finding for approving a Variance is that the property or use involves a unique or exceptional circumstance. Although Lakehaven Drive provides one of three major access points into this area of Lakewood Village from Lawrence Expressway, this street contains two lanes of traffic and has a speed limit of 25 miles per hour. Therefore, this is not a unique circumstance in the City, as many residential neighborhoods have similar public street characteristics. Additionally, staff finds that there are no unique circumstances about the property's size, shape, topography, location or surroundings that should enable encroachment into the driveway vision triangle.

Staff also finds there are alternative fence designs which allow the driveway vision triangle to be maintained, including a reduction of height or relocating the fence outside of the driveway vision triangle area. Therefore, staff cannot make the first finding regarding exceptional or extraordinary circumstances or conditions that apply to this property.

2. The second required finding is that the granting of a Variance will not be detrimental to adjoining properties and uses. Although the fence is partially open and allows some visibility, the fence exceeds the maximum height for fences within the driveway vision triangle as required by Sunnyvale Municipal Code. The Municipal Code does not enable such allowances for open style fences that exceed 3 feet in the vision triangle, and therefore shall be considered detrimental to the public safety of the immediate area. As indicated by the Traffic Division, the fence appears to be solid to the driver at specific angles when backing out of the driveway. Therefore, the visibility of the driver to pedestrians and other vehicles is limited and poses safety concerns. Therefore, staff cannot make the second finding that the project will not be detrimental to the public welfare.
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. All residential property owners are required to adhere to vision triangle requirements. The intent of the requirement is to promote vision triangles that are free from obstruction, which in turn promotes safety by providing drivers a better view of pedestrians and vehicular traffic while backing out of a driveway. All fences that are legally constructed with the proper permits must meet the same requirement.

While the applicant states that there are existing fences in the neighborhood that also exceed 3 feet in height, these existing fences may have been approved or built under prior code requirements or built

without permits. Precedent has also been set in this neighborhood to require that existing fences be brought into compliance with current code requirements and Single Family Home Design Techniques. Therefore, staff cannot make the third finding that granting the Variance will not grant a special privilege not enjoyed by other surrounding property owners.

Expected Impact on the Surroundings: Public safety is the primary concern due to obstruction of the driveway vision triangle. The applicant has stated that the design of the fence enables adequate visibility to mitigate any perceived public safety concern within the driveway area (Attachment D, Letter from the Applicant). Although, the proposed fence allows partial visibility through the design of the fence, the Traffic Division indicated that the fence can appear to be solid to a driver at specific angles when a vehicle is backing out of the driveway. Therefore, the limited visibility of vehicles backing out from the driveway poses a safety concern and is inconsistent with the intent of the vision triangle requirement.

Fiscal Impact

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

Public Contact

At the time of the staff report, staff did not receive any comments from the neighbors.

Notice of Public Hearing	Staff Report	Agenda
<ul style="list-style-type: none"> Published in the <i>Sun</i> newspaper Posted on the site 62 notices mailed to the property owners and residents within 300 ft. of 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 Findings (Attachment A) were not made. However, if the Planning Commission 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 the appeal and uphold the decision of the Director of Community Development to deny the Miscellaneous Plan Permit, and deny the Variance.
2. Grant the appeal and approve the Miscellaneous Plan Permit for the 3-foot fence, and deny the Variance subject to the recommended Conditions of Approval.
3. Grant the appeal and approve the Miscellaneous Plan Permit for a 3-foot fence, and deny the Variance subject to modified Conditions of Approval.
4. Grant the appeal and approve the Miscellaneous Plan Permit and Variance.

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. MPP Decision Letter

Recommended Findings – Miscellaneous Plan Permit

In order to approve a Miscellaneous Plan Permit, one or more of the following findings must be met. Staff was unable to make these required findings.

- 1) The permit will attain the objectives and purposes of the General Plan of the City of Sunnyvale. *[Finding not met].*

Land Use and Transportation Element, Policy N1.1:

Protect the integrity of the City's neighborhoods, whether residential, industrial or commercial.

Staff does not believe the subject fence will attain the objectives and purposes of the General Plan. Staff finds the height and design of the subject fence has a detrimental effects public safety, as the fence obstructs the visibility of vehicles backing out from the existing driveway.

- 2) The permit will ensure 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].*

Staff believes the subject fence potentially detracts from the appearance of adjacent properties and from the character of the neighborhood as a whole. The height and design of the fence create a walled-in appearance, which is further exacerbated by the siting of the fence up the front property line and directly adjacent to the back of the sidewalk.

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 Lakehaven Drive provides one of three major access points into this area of Lakewood Village from Lawrence Expressway, many residential neighborhoods have similar public street characteristics. Additionally, staff finds that there are no unique circumstances about the property's size, shape, topography, location or surroundings that should enable encroachment into the driveway vision triangle. Therefore, staff cannot make the first finding regarding exceptional or extraordinary circumstances or conditions that apply to this property and finds that there are alternative fences designs which allow the driveway vision triangle to be maintained.

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]*.

Although the fence is partially open and allows limited visibility, the fence exceeds the maximum height for fences within the driveway vision triangle as required by code. As indicated by the Traffic Division, the fence appears to be solid to the driver at specific angles when backing out of the driveway. Therefore, the visibility of the driver is limited and poses safety concerns. As such, staff cannot make the second finding that the project will not be detrimental to the public welfare.

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]*.

Although there are existing fences in the neighborhood that also exceed 3 feet in height, these existing fences may have been approved or built under prior code requirements or built without permits. Precedent has been set in this neighborhood to require that existing fences be brought into compliance with current code requirements. Therefore, staff cannot make the third finding that granting the Variance will not grant a special privilege not enjoyed by other surrounding property owners.

Recommended Conditions of Approval:

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. 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.
2. Project shall be in conformance with the plans approved at the public hearing(s). 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 to the approved plans may be approved at staff level by the Director of Community Development.
3. The driveway gate shall be modified to be an electronic gate with doors opening in.

1005 lakehaven

ATTACHMENT C

Page 1 of 2



4 foot wood picket fence

DENIED

BY Maven Calh
 For Director of Community Development
 DATE 10/26/07



Misc. Plan Permit 2007-0724 1005 Lakehaven Drive, Sunnyvale, California

**Subject: Appeal of staff conditions for approval of Miscellaneous Plan Permit 2007-0724
Installation of a 4-foot Tall Fence in the Required Front Yard.**

3.11 Landscaping G – Fencing along front property lines and along side property lines within the front setback areas should not exceed 3 feet in height.

SMC 19.12 – The triangle area created by a line connecting points along the back edge of a public sidewalk and the outer edge of a driveway, which points are established 10 feet distant from the intersection of the back edge of the sidewalk and the outer edge of the driveway.

Background:

The Guins family is the new home owner of 1005 Lakehaven Drive, Sunnyvale. Neighbor called to the city and complained about our new fence and removed the fence company's sign that installed it.

There are more than 20 residents in Lakewood neighborhood that have installed the front fences that are over 3 feet in height. Even your chief staff planner has told me that there is no way to have them to enforce this permit in Sunnyvale City.

This application is being processed to appeal the staff conditions that request a reduction in height to 3 feet.

Justification:

First – We have already adjusted the gate opening direction from opening outside to inside. We also open the gate all the time although we have 2 new babies who just learned how to walk.

Second – We have solicited the opinions of a majority of our nearest neighbors and the fact is the neighbors that would be most immediately affected by the view of our fence, do not find it to obstruct their view when pulling out of their driveways.

Conclusion:

We contend that our permit application should be approved as submitted. We have made every effort to comply with the substance of the Sunnyvale code regarding Fence Permits.

We offer a number of pictures and drawings to indicate that the view of our fence and our neighbor's visual acceptance.

Misc. Plan Permit 2007-0724 1005 Lakehaven Drive, Sunnyvale, California
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.

There is a significant amount of traffic along Lakehaven Drive, which creates a hazard for children playing in the front yard.

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 fence is made of open wood slats, which does not significantly block the visibility of vehicles and pedestrians.

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.

There are other homes in the neighborhood that have fences that are greater than 3 feet.

We have solicited the opinions of a majority of our nearest neighbors and the fact is the neighbors that would be most immediately affected by the view of our fence, as it is placed do not find it offensive.

We contend that our permit application should be approved as submitted. We have made every effort to comply with the substance of the Sunnyvale code regarding Fence Permits.

We offer a number of pictures and drawings to indicate that the view of our fence and our neighbor's visual acceptance.



October 26, 2007

Terry Lin
1005 Lakehaven Dr.
Sunnyvale, CA 94089

RE: Miscellaneous Plan Permit 2007-0724
Installation of a 4-foot Tall Fence in the Required Front Yard

Dear Ms. Lin:

The City of Sunnyvale has reviewed your Miscellaneous Plan Permit application to allow an existing 4-foot tall fence in the required front yard (2007-0724) at 1005 Lakehaven Drive. As we have discussed, staff has several concerns regarding the proposed plan. First, the height of the fence is inconsistent with the following City's Single-Family Home Design Techniques:

3.11 Landscaping G - Fencing along front property lines and along side property lines within the front yard setback areas should not exceed three feet in height.

Second, staff has concerns regarding the portion of the fence that runs across the driveway. While staff has allowed gates to be installed across driveways, the gates are required to be electronic to ensure that driveways can be effectively used as parking spaces and to avoid vehicles queuing in the public right-of-way. The third concern is regarding the portions of the fence that are located within the driveway vision triangle. As we have discussed, the driveway vision triangle is defined as:

SMC 19.12 - The triangle area created by a line connecting points along the back edge of a public sidewalk and the outer edge of a driveway, which points are established ten feet distant from the intersection of the back edge of the sidewalk and the outer edge of the driveway.

The maximum height of a fence within the driveway vision triangle is 3 feet. Therefore, a Variance is required if you intend to retain the existing 4-foot tall fence within the driveway vision triangle. **As a result of these concerns, the Department of Community Development has denied the Miscellaneous Plan Permit application.**

You may appeal this decision to the Planning Commission by filing a written appeal within fifteen (15) calendar days of the date of this notice. There is a \$117.00 filing fee for the appeal. An application and fee schedule is attached.

ADDRESS ALL MAIL TO: P.O. BOX 3707 SUNNYVALE, CALIFORNIA 94088-3707
TDD (408) 730-7501



If you choose not to appeal this decision, the existing fence must be modified to meet the Sunnyvale Municipal Code. This includes the following: reduce the height of the fence to a maximum of 3 feet, modify the gate across the driveway to open electronically or remove entirely. You are required to begin this process by submitting revised plans to the Planning Division within thirty (30) calendar days of the date of this letter. The Neighborhood Preservation Division will follow up with you to establish a deadline for completing the modifications to the fence.

If you have any questions, please contact me at (408) 730-7637. Thank you for your cooperation.

Sincerely,

A handwritten signature in cursive script, reading "Noren Caliva".

Noren Caliva
Assistant Planner

Enclosure

Cc: Jhoanne Navarro, Neighborhood Preservation Specialist