



**CITY OF SUNNYVALE
REPORT
Planning Commission**

February 11, 2008

SUBJECT: **2007-0822** – Application located at **734 Liverpool Way** (near Goldfinch Way) in an R-0 (Low-Density Residential) Zoning District.

Motion Appeal of a decision by the Administrative Hearing Officer approving a Use Permit to allow a modified design for an existing 9' 7" tall wood fence in the reducible front yard.

REPORT IN BRIEF

Existing Site Conditions Single-family residence

Surrounding Land Uses

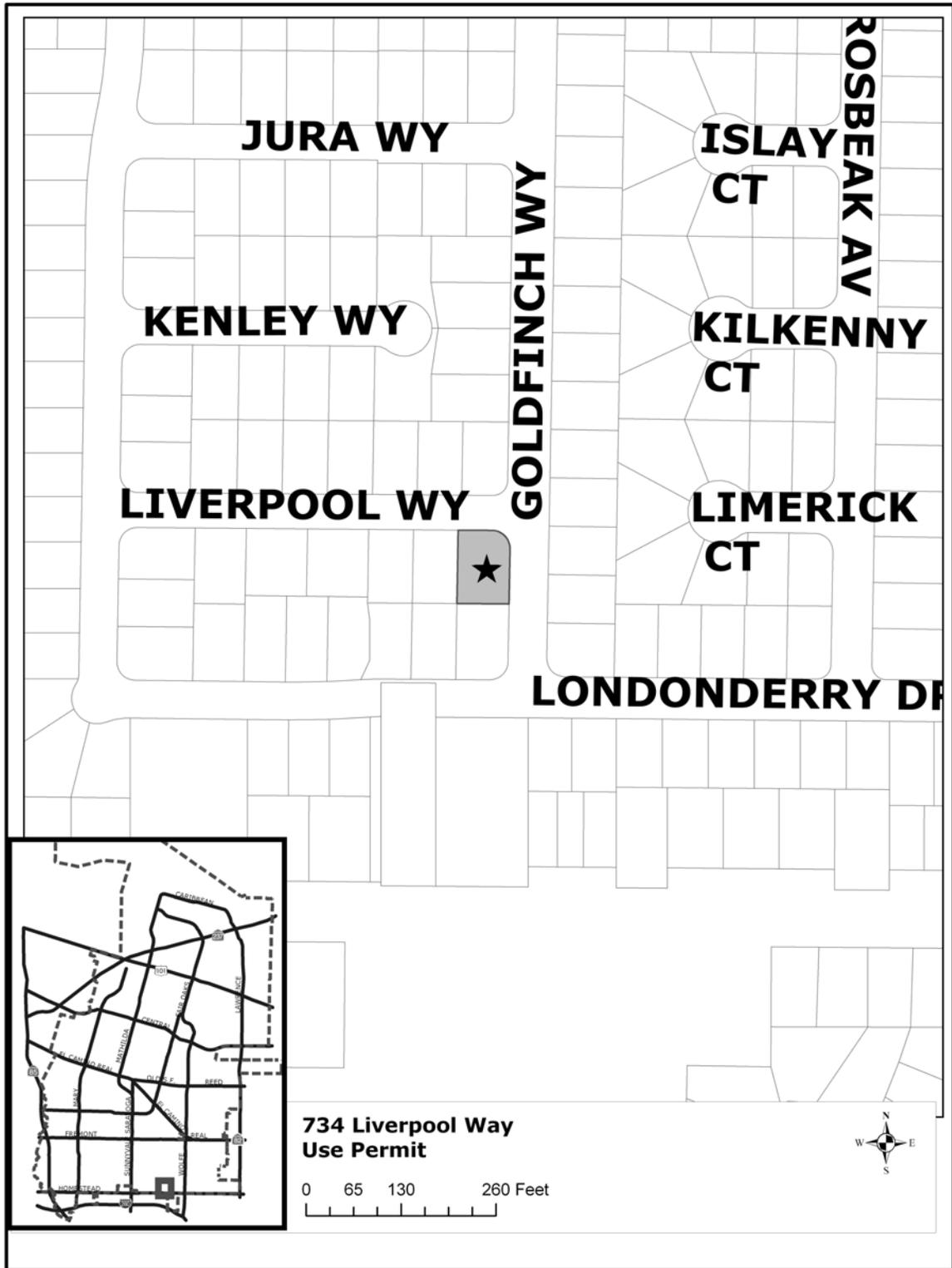
North	Single-family residence (across Liverpool Way)
South	Single-family residence
East	Single-family residence (across Goldfinch Way)
West	Single-family residence

Issues Fence height, neighborhood compatibility, fence location

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

Administrative Hearing Officer Action Approved the Use Permit with a modified fence design as shown in Attachment D and the Conditions of Approval listed in Attachment B.

Staff Recommendation Deny the appeal and uphold the decision of the Administrative Hearing Officer.



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.)	6,076	Same	6,000 min.
Gross Floor Area (s.f.)	2,669	Same	2,734 max. without PC review
Lot Coverage (%)	unknown	Same	40% max. for two-story homes
Floor Area Ratio (FAR)	43.9%	Same	45% max. without PC review

ANALYSIS**Description of Proposed Project**

The original application request was to allow an existing 9' 7" fence in the reducible front yard along Goldfinch Way to remain in its current location. The fence consists of a wood retaining wall topped by a solid wood fence and wood lattice. The retaining wall varies from 3' 11" to 4' 2" in height, the solid wood fence varies from 4' 4" to 4' 5" in height, and the lattice top measures 1' 5", for a total fence height varying from 9' 7" to 10'. The previous staff report listed the fence's maximum height as 9' 7". However, additional measurements indicate the fence has a total height of 10'. The existing fence is set back approximately 2' 7" from the public sidewalk (see Attachment C – Original Site Plans and Elevations).

The applicant obtained a property line survey indicating the existing fence encroaches into the public right-of-way by approximately 3' 10". As a result of the survey, the applicant proposed a revised design for the subject fence. The fence would be removed from the retaining wall and relocated to the property line. The fence would consist of solid wood boards approximately 4' 6" in height with a 1' 3" lattice top. The retaining wall would be maintained in its current location, but would be reduced to a height of 3' (see Attachment D – Revised Site Plans and Elevations). The fence as approved by the Administrative Hearing Officer would provide the applicant with 5' 9" of privacy when standing at the level of the rear yard.

Background

On June 11, 2007, the Neighborhood Preservation Division received a complaint regarding a fence at the subject site built without permits and encroaching into the City right-of-way. Neighborhood Preservation issued a warning letter instructing the property owner to apply for a Use Permit for the existing fence or remove the fence.

According to the applicant, the subject fence was constructed in 1974. Lattice was added to the fence in 1989 to increase its height. A search of City records was not able to locate any permits for the subject fence; therefore the applicant applied for a Use Permit for the fence on August 2, 2007.

On November 14, 2007, an Administrative Hearing was held on the proposed application. Although staff recommended providing a period of 60 days to modify the fence, the applicant requested additional time to allow her to raise funds for the project. The Hearing Officer took the item under advisement to review the deadlines provided to other applicants with similar projects. On Friday, November 16 2007, the Administrative Hearing Officer took action to approve the Use Permit for a modified design as shown in Attachment D, and with modified Conditions of Approval providing the applicant with a period of 120 days to modify the existing fence. The minutes of the meeting are located in Attachment J.

On December 3, 2007, a neighboring resident filed an appeal of the Administrative Hearing Officer's decision (see Attachment K – Appeal Letter). The appellant states that the subject fence should be limited to no more than 8' in height as measured from the top of the adjacent curb, and that the City should require the plans for the fence to be prepared by a Licensed Structural Engineer.

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

File Number	Brief Description	Hearing/Decision	Date
1969-0713	Tentative Map to subdivide an existing parcel into 9 single-family residential lots	City Council / Approved	03/11/1969

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 modifications to existing facilities.

Use Permit

Site Layout: The subject site is located on the corner of Liverpool Way and Goldfinch Way. The site has a two-story single-family home facing Liverpool Way. The grade level of homes along Liverpool Way, including the subject site, is several feet higher than the level of the public street. As a result, retaining walls and sloping grades are common in this neighborhood.

Fence Location and Design: The existing fence is located in the reducible front yard along Goldfinch Way. The fence consists of a solid wood retaining wall varying from 3' 11" to 4' 2" in height, a solid wood fence varying from 4' 4" to 4' 5" in height, and a 1' 5" lattice top. The resulting fence varies from 9' 7" to 10' in height as measured from the top of the adjacent curb, and is approximately 7' in height as measured from the adjacent grade on the interior of the fence. The majority of the fence is set back 2' 7" inches from the back of the public sidewalk, except for a central planter area containing a City street tree where the fence is set back 4' 7" from the sidewalk (see Attachment C – Original Site Plans and Elevations).

The applicant states that a permit was obtained for construction of the fence in 1974. Staff was not able to find any record of this permit, nor did staff find a permit for the addition of lattice to the fence in 1989. It is unclear whether the retaining wall below the fence was installed by the applicant, or whether it was part of the construction of the original home in the early 1970s. Staff was not able to locate copies of the original building permits for the homes in this subdivision. However, the adjacent property at 733 Londonderry Drive has a similar retaining wall with a height of 2' 1" constructed in the same general location.

Landscaping: The existing fence has a setback ranging from 2' 7" inches to 4' 7" behind the public sidewalk. In the center of the fence line is an 8' wide central planter area containing a City street tree. The applicant has planted landscaping including shrubs and vines in front of the subject fence, and had previously affixed plastic netting to the exterior of the fence to help vines adhere. The applicant has also planted vines behind the fence and trained them to grow over the top of the fence. However, the applicant notes that these vines are not visible because they were damaged during a winter frost and are still in the process of growing back (see Attachment F – Applicant's Letter).

Compliance with Development Standards/Guidelines: Reducible yard fences greater than 7' tall as measured from the top of the adjacent curb require a Use Permit. A building permit is required for any fence exceeding 6' in height as measured from the adjoining grade. A building permit is also required for any retaining wall 4' in height or greater as measured from the bottom of the footings. The proposed design in Attachment D requires a Use Permit and the

retaining wall portion requires a building permit based on the depth of its footings, but the fence portion does not require a building permit.

Fence height and design

Sunnyvale's Single Family Home Design Techniques state:

Side fencing may be solid wood boards, but open lattice work segments at the top of the wall are softer in appearance and encouraged. For side property lines abutting a public street, low fencing is encouraged. However, 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 design of the proposed fence as shown in Attachment D is consistent with the Design Techniques. The height of the fence as measured from the top of the curb is taller than the maximum height recommended in the Design Techniques. However, the grade of the subject property is approximately 3' higher than the grade of the adjacent sidewalk. The revised proposal also includes a setback of at least 5' 5" from the sidewalk, which would significantly mitigate the visual impacts of a taller fence. To further soften the fence's appearance, the Administrative Hearing Officer imposed Condition of Approval #3B requiring the applicant to plant landscaping in front of the fence. The Administrative Hearing Officer also imposed Condition of Approval #3C requiring the removal of the plastic netting affixed to the exterior of the fence.

Fence location

Sunnyvale Municipal Code section 19.48.020 states:

(5) Fences may be built to the existing sidewalk, or if there is a monolithic sidewalk or if there are no sidewalks, to the existing property line . . .

Goldfinch Way has a monolithic sidewalk, therefore fences may not extend beyond the property line. Public Works Engineering staff notes that retaining walls may be allowed to remain in the public right-of-way, provided the property owner records an agreement with the City providing for required public utility work. A temporary encroachment permit is also required before doing any work in the right-of-way, including removal or relocation of a fence.

Staff finds the applicant's proposal in Attachment D to be consistent with City requirements and policies related to the fences in the public right-of-way. Conditions of Approval #2B-2C require the property owner to obtain a temporary encroachment permit for relocation of the fence and to record a "Notice and Covenant Related to Private Construction over the Public Right-of-Way" for the retaining wall as required by Public Works.

Expected Impact on the Surroundings: The existing fence is located adjacent to the public sidewalk and therefore has a significant visual impact on the streetscape and the overall neighborhood. The alternative fence design proposed by the applicant is set back significantly from the sidewalk, reducing the potential for a walled-in appearance. With the addition of landscaping to soften the appearance of the fence, the proposed alternative design is consistent with the Single Family Home Design Techniques.

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 • 16 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

Except from the appellant, staff has not received any public comments related to the appeal. However, staff did receive comments from 4 members of the public prior to the Administrative Hearing (see Attachment H – Public Comments).

Appeal: On December 3, 2007, a neighboring resident filed an appeal of the Administrative Hearing Officer's decision (see Attachment K). The appellant states that the height of the fence is 10' rather than 9' 7" as stated in the previous staff report, and he expresses concern that the proposed plans do not clearly indicate what will be constructed. The appellant further states that the subject fence should be limited to no more than 8' in height as measured from the top of the adjacent curb, that the applicant should be required to reduce the grade of her reducible yard, and that the City should require the plans for the fence to be prepared by a Licensed Structural Engineer.

Applicant Comments Regarding Appeal: The applicant has submitted a response letter addressing the grounds for appeal (see Attachment L). The applicant states that the grade of the property has not been raised since the home was constructed in 1969. The applicant further states that she does not believe she is required to have plans prepared by a Licensed Structural

Engineer, but is willing to comply with the decision of the Administrative Hearing Officer and obtain any required building permits.

Staff Comments Regarding Appeal: The grounds for appeal listed in the appeal letter are fence height, plan accuracy, property grade, and building permit requirements. Staff's response to these issues is below.

1. *The total height of the existing fence is 10', not 9' 7" as stated in the previous staff report.*

The grade of the property at the existing fence line is approximately level with the top of the adjacent public curb, but varies slightly. After receiving the appeal, staff performed additional detailed measurements across the length of the fence. Staff found the retaining wall varies from 3' 11" to 4' 2" in height, the solid board fence varies from 4' 4" to 4' 5" in height, and the lattice top measures 1' 5" in height. The resulting fence varies from 9' 7" to 10' in height as measured from the top of the adjacent curb, and is approximately 7' in height as measured from the adjacent grade on the interior of the fence. These improvements are proposed to be removed.

2. *The proposed plans do not clearly indicate what will be constructed.*

Although the plans are not conventional in their presentation and may be difficult to understand, they are typical of plans provided by homeowners. Attachment D includes a cover sheet with a detailed description of the proposed modifications to the fence. The retaining wall will be maintained in its existing location, but will be reduced in height to no more than 3' as measured from the top of the adjacent public curb. The existing fence will be removed from the retaining wall, and a new fence will be constructed at least 5' 5" from the back of the public sidewalk. The new fence will consist of solid wood boards measuring 4' 6" in height with a 1' 3" lattice top, for a total height of 5' 9" as measured from the adjacent grade in the rear yard. The total height of the fence as measured from the top of the adjacent curb will be approximately equal to its current height, varying from 9' 7" to 10'.

3. *The subject fence should be limited to no more than 8' as measured from the top of the adjacent public curb.*

Staff finds the design of the proposed fence as shown in Attachment D to be consistent with the Single Family Home Design Techniques. Although the height of the fence as measured from the top of the curb is taller than the maximum height recommended in the Design Techniques, the proposed fence would be set back significantly from the sidewalk. This setback, combined with the landscaping required by Condition of Approval #3C, would mitigate the visual impacts of a taller fence and prevent a walled-in appearance. Staff notes

that where significant grade differentials exist, staff practice is to allow interior fence heights up to 6' for privacy. The applicant is requesting an interior height less than 6', which is consistent with this practice.

4. *The applicant should be required to modify the grade of her reducible yard to return it to the original grade at the time the home was constructed.*

The proposed project does not involve a change in grade. Staff believes the modified fence design in Attachment D adequately addresses aesthetics along the reducible yard, and does not believe any modification to the grade of the property is needed.

5. *The plans for the retaining wall and fence should be prepared by a Licensed Structural Engineer and building permits should be required.*

Building permits are required for the retaining wall because its height is greater than 4' as measured from the bottom of the footings. The Building Safety Division does require plans for retaining walls over 4' in height to be prepared by a Licensed Structural Engineer. Building permits are not required for fences with heights less than 6' as measured from the adjoining grade unless they are located directly atop a retaining wall, therefore no building permit is required for the proposed fence.

Conclusion

Findings and General Plan Goals: Staff is able to make the required Findings for the project as proposed in Attachment D and recommends upholding the decision of the Administrative Hearing Officer to approve of the Use Permit. Recommended Findings are located in Attachment A.

Conditions of Approval: Staff recommends the Conditions of Approval located in Attachment B.

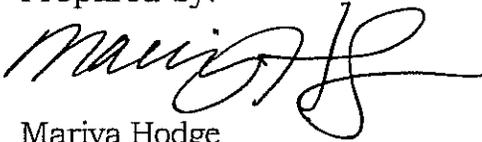
Alternatives

1. Uphold the decision of the Administrative Hearing Officer to approve the Use Permit with the design shown in Attachment D and the attached Conditions of Approval.
2. Uphold the decision of the Administrative Hearing Officer to approve the Use Permit with a modified design or modified Conditions of Approval.
3. Deny the Use Permit.

Recommendation

Alternative 1

Prepared by:



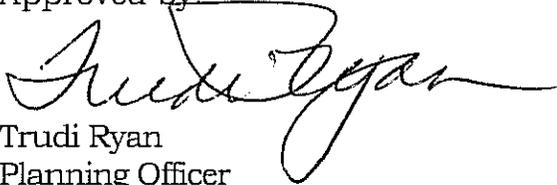
Mariya Hodge
Project Planner

Reviewed by:



Gern Caruso
Principal Planner

Approved by:



Trudi Ryan
Planning Officer

Attachments:

- A. Recommended Findings
- B. Recommended Conditions of Approval
- C. Original Site Plans and Elevations
- D. Modified Site Plans and Elevations as Approved by the Hearing Officer
- E. Photographs of the Subject Fence
- F. Applicant's Original Letters and Use Permit Justifications
- G. Applicant's Revised Letters and Use Permit Justifications
- H. Public Comments Received Prior to Administrative Hearing
- I. Results of Property Line Survey
- J. Minutes of Administrative Hearing on November 14, 2007
- K. Letter Received from Appellant
- L. Applicant's Letter Regarding Appeal

Recommended Findings - Use Permit

Goals and Policies that relate to this project are:

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

Single Family Home Design Techniques - 3.11.G – *Side fencing may be solid wood boards, but open lattice work segments at the top of the wall are softer in appearance and encouraged. For side property lines abutting a public street, low fencing is encouraged. However, 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.*

1. The proposed use attains the objectives and purposes of the General Plan of the City of Sunnyvale. *(Finding met)*
2. The proposed project 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 met)*

The current proposal for a 5' 9" fence set back at least 5' 5" from the sidewalk is consistent with Sunnyvale's Single Family Home Design Techniques. The combination of increased setbacks and required landscaping will significantly mitigate the visual impacts of the proposed fence. As conditioned, the proposed project will not have a detrimental impact on the streetscape or surrounding neighborhood.

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. 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 must be approved at a public hearing.
- B. These Conditions of Approval shall be reproduced on a page of the plans submitted for a Building permit for this project.
- C. 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.

2. OBTAIN OTHER PERMITS

- A. Obtain building permits if required.
- B. Prior to issuance of building permits, or within 120 days of the final approval of this permit if no building permits are required, record a "Notice and Covenant Related to Private Construction over the Public Right-of-Way" with the Public Works Department to allow the existing retaining wall to remain in its current location.
- C. Obtain a temporary encroachment permit from the Public Works Department prior to performing any work in the public right-of-way, including fence removal.

3. FENCES

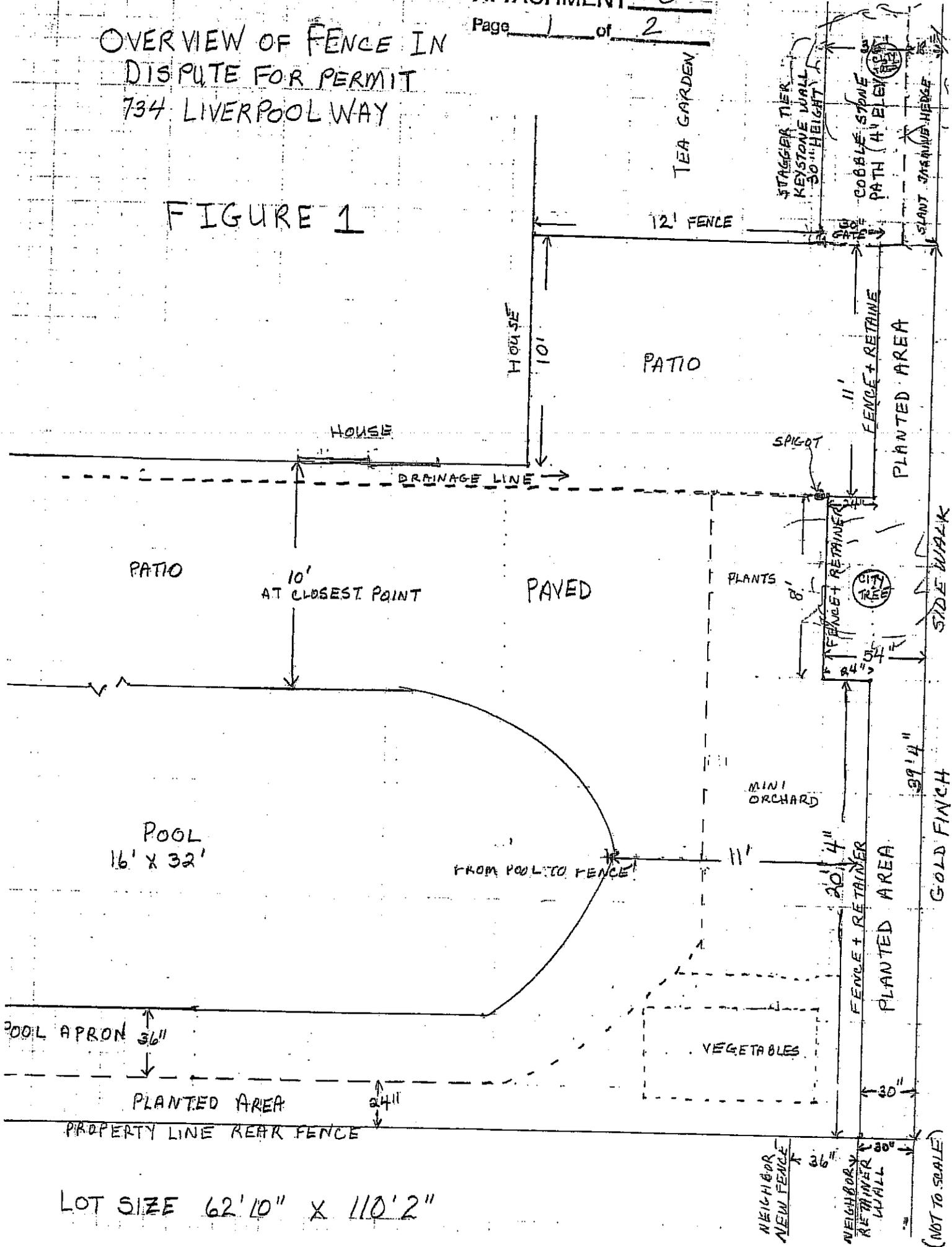
- A. The existing fence in the public right-of-way shall be removed within 120 days of the final approval of the Use Permit. The retaining wall may remain in its current location at a height of 3' as measured from the top of the adjacent curb, subject to Condition of Approval #2B. The new fence shall be located at least 5' 5" from the back of the sidewalk.
- B. Trees, vines, or other tall landscaping shall be planted in the area between the fence and the retaining wall to soften the appearance of

the fence. Landscaping shall be planted and maintained to achieve 40% screening of the front of the fence within 6 months.

- C. The existing plastic netting affixed to the front of the fence and retaining wall shall be removed within 120 days of the date of the final decision on the Use Permit. If attachment points for vines and landscaping are required, use wood lattice or other high-quality materials with colors to match the fence. The design and location of any lattices shall be reviewed and approved by the Director of Community Development.

OVERVIEW OF FENCE IN DISPUTE FOR PERMIT 734 LIVERPOOL WAY

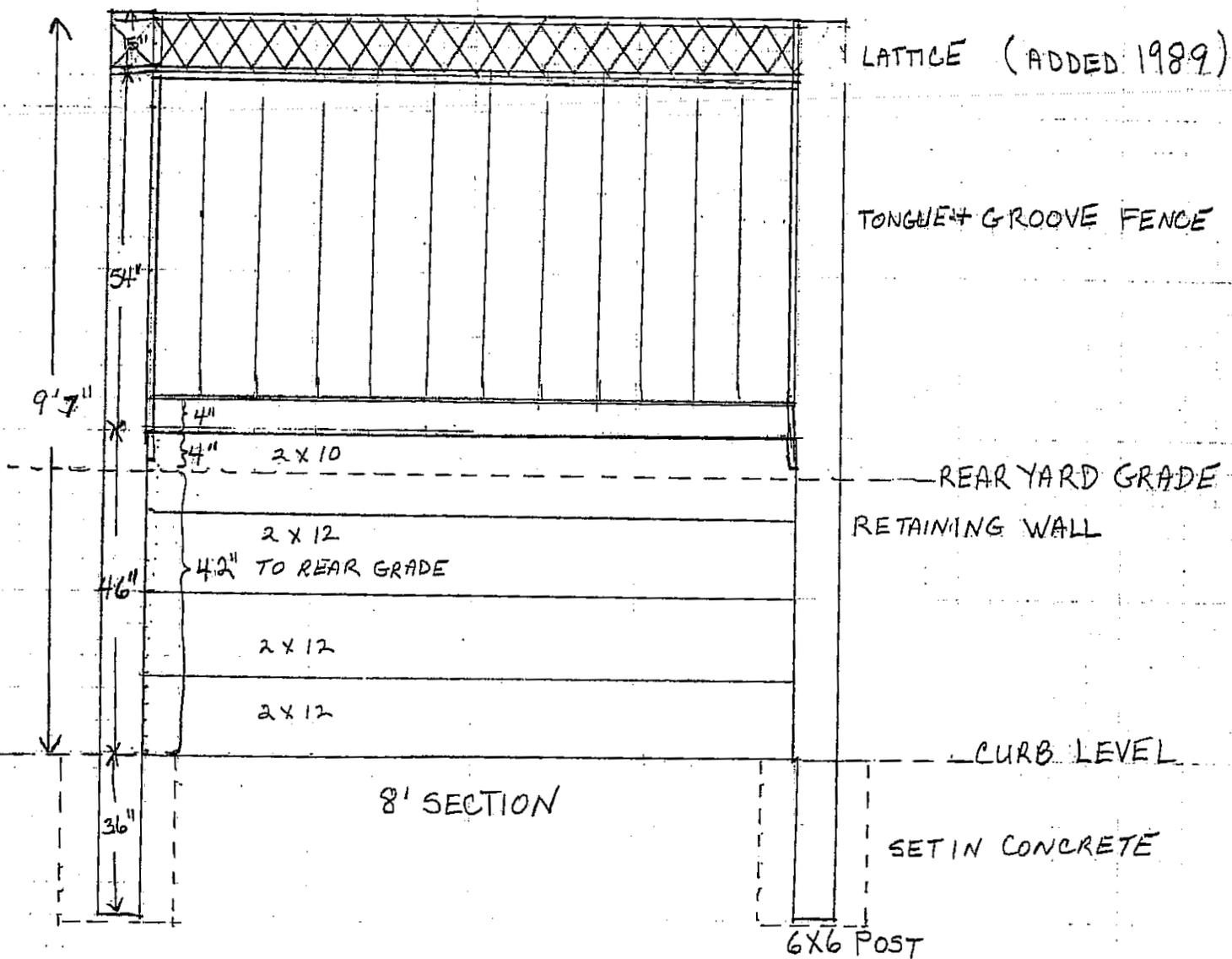
FIGURE 1



LOT SIZE 62'10" X 110'2"

(NOT TO SCALE)

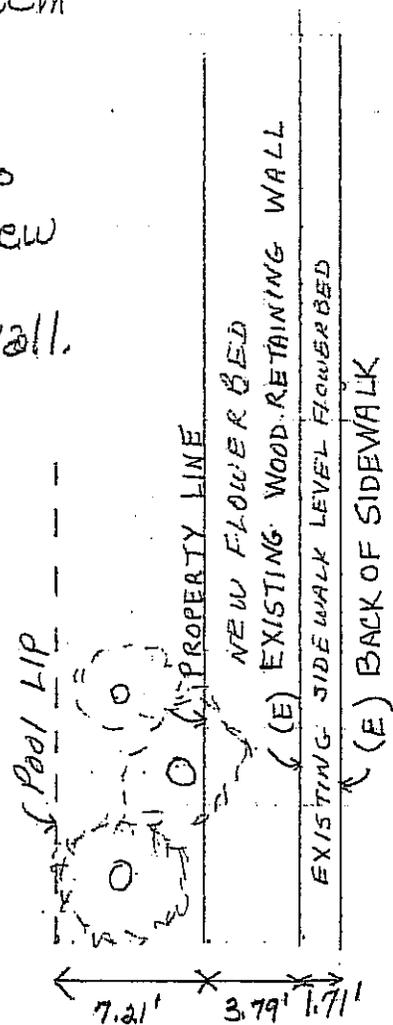
FIGURE 2



AS VIEWED FROM GOLDFINCH

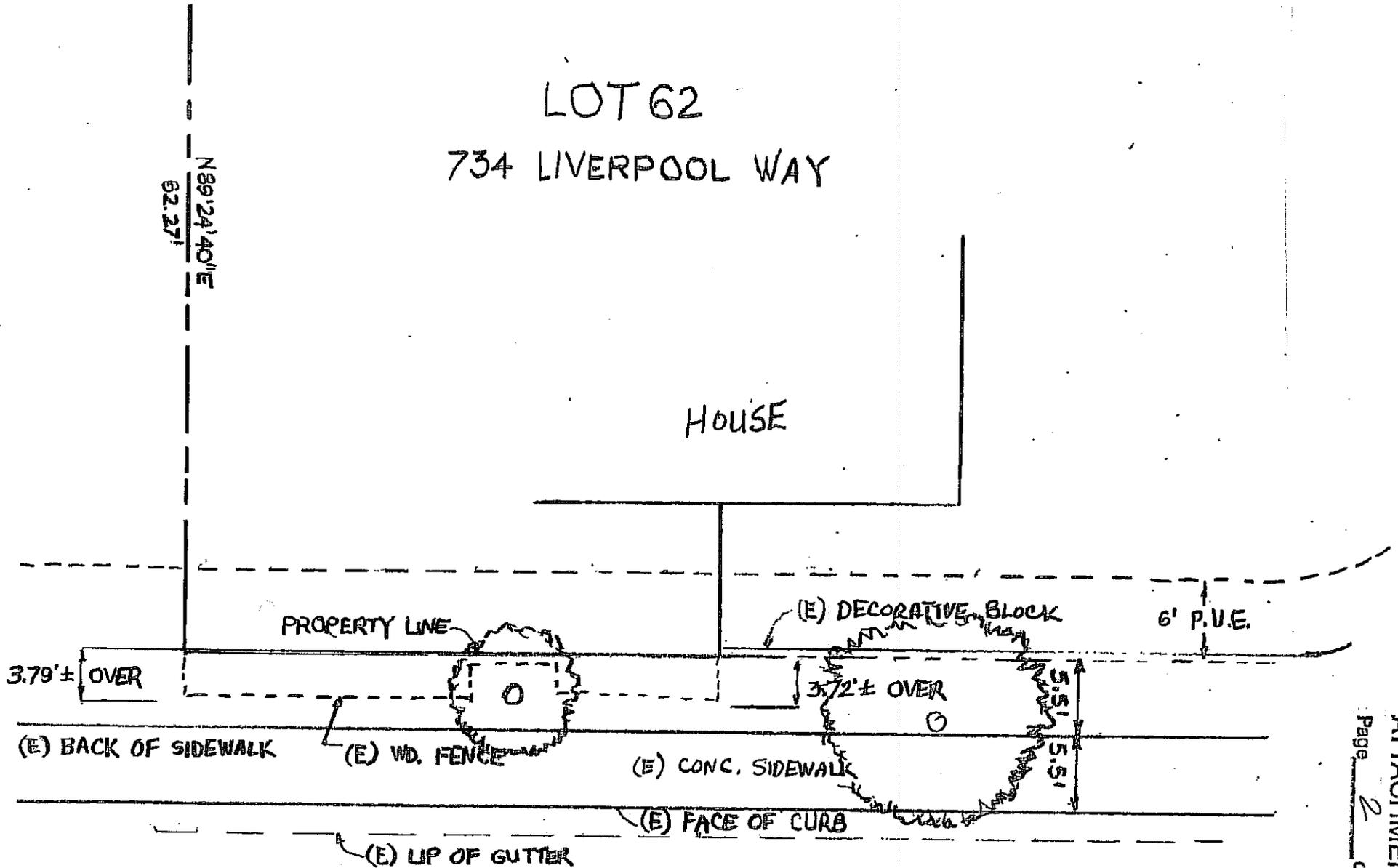
FIGURE 3 PROPOSED PLAN

- 1) Reduce height of existing retaining wall to 36" and leave in place for soil erosion control.
- 2) Move existing fence back 3.79' to property line. Height of existing fence including lattice is 5.75'.
- 3) Move existing faucet back 4' to remain inside fence line.
- 4) Reconfigure existing irrigation system to supply water to both inside and outside flower beds.
- 5) Grade new outside flowerbed to accommodate a 4-6" drop from new fence line at existing elevation to new lower height of retaining wall.



LOT 62
734 LIVERPOOL WAY

HOUSE

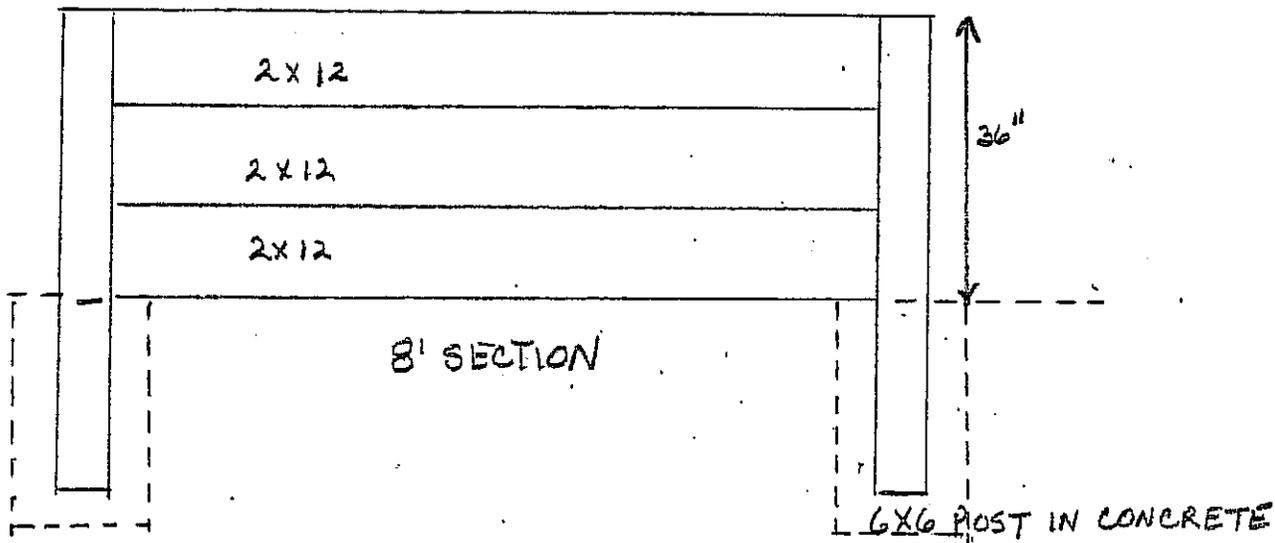
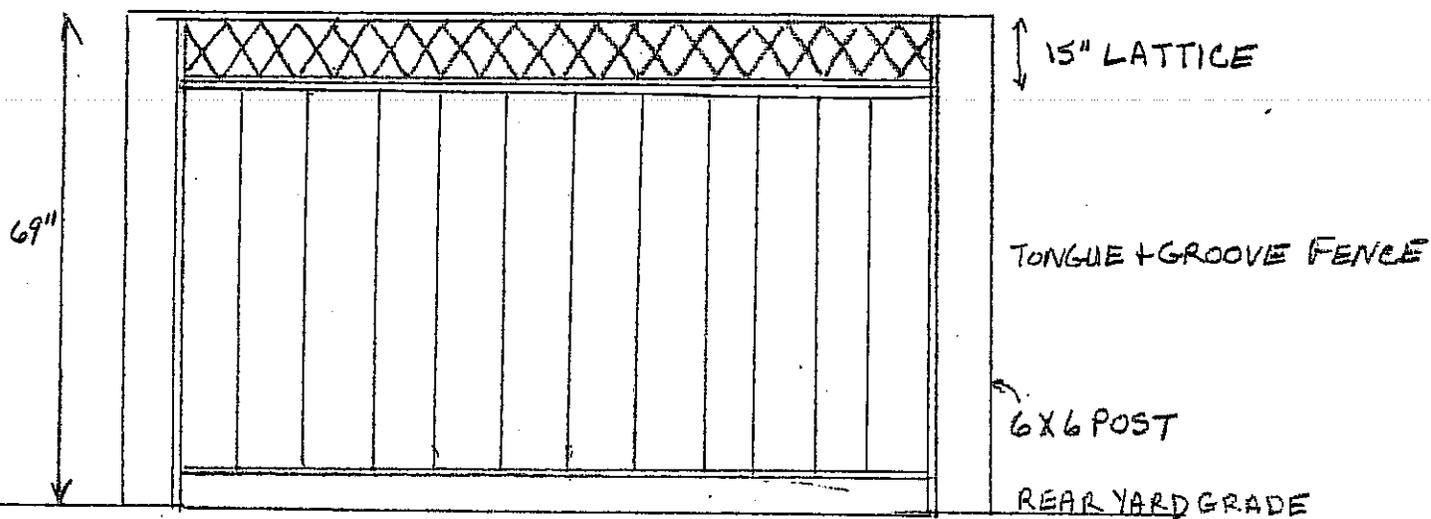


734 LIVERPOOL WAY

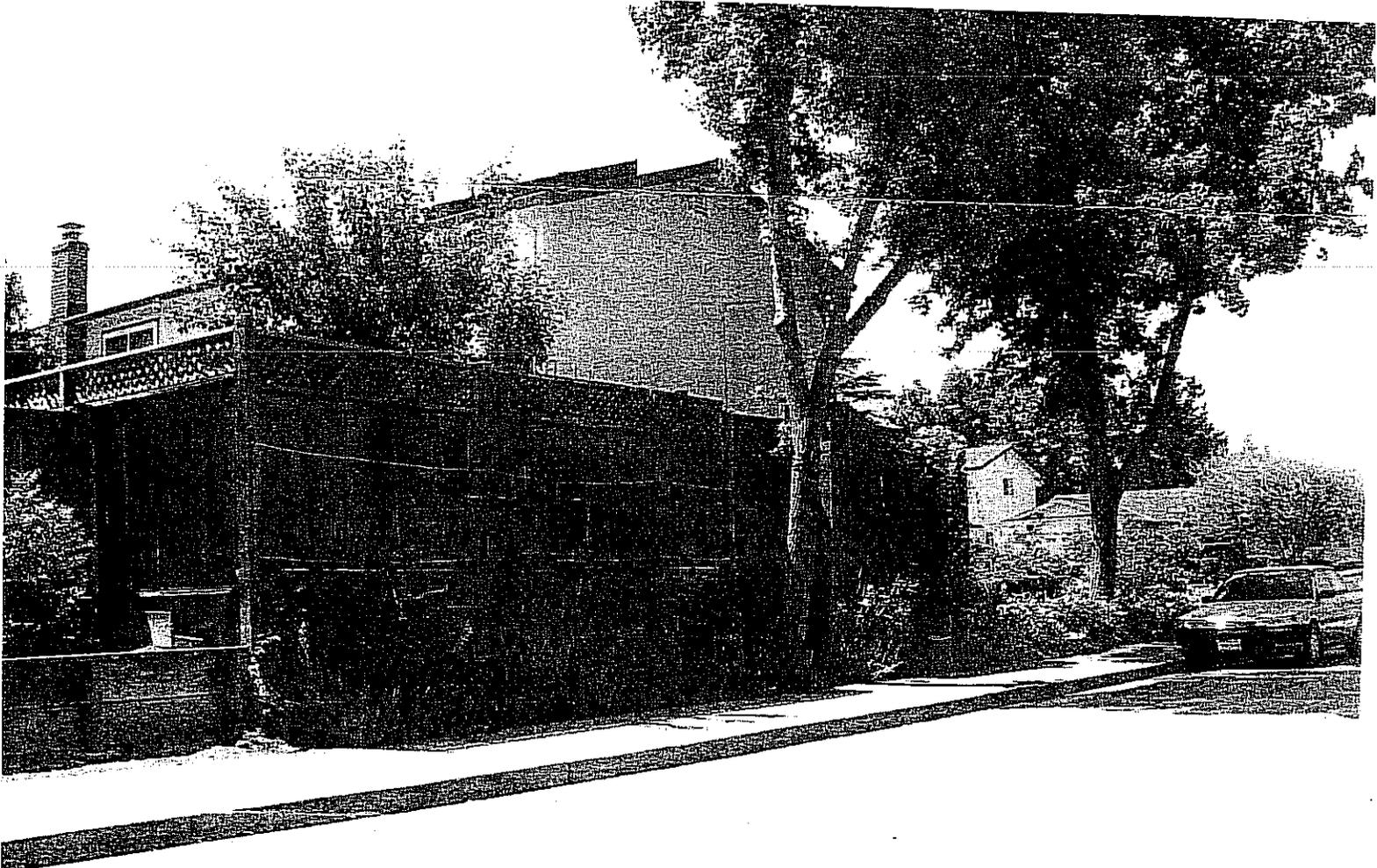
ATTACHMENT D

Page 3 of 3

FIGURE 4 NEW VIEW



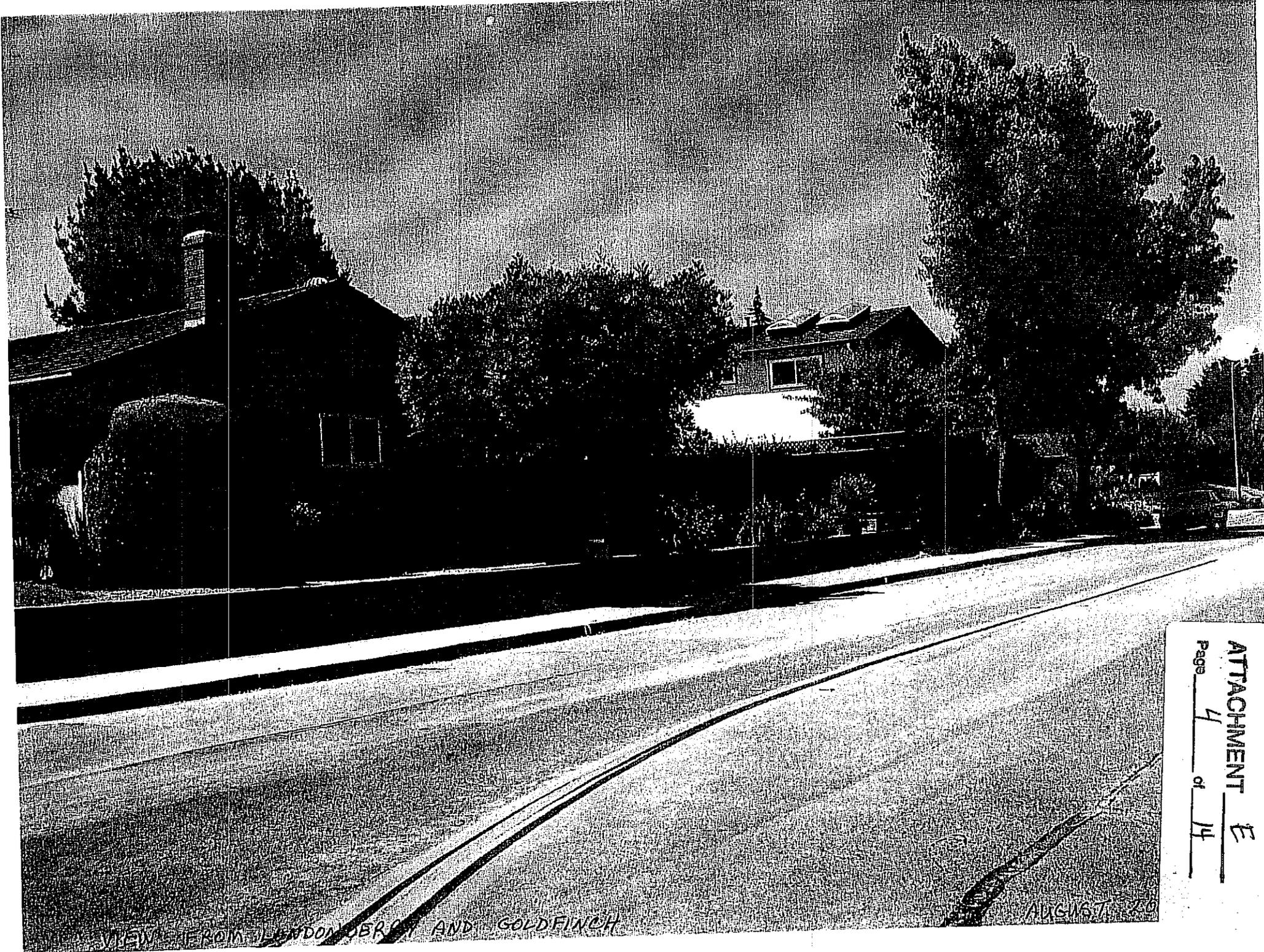
AS VIEWED FROM GOLDFINCH







GOLDFINCH



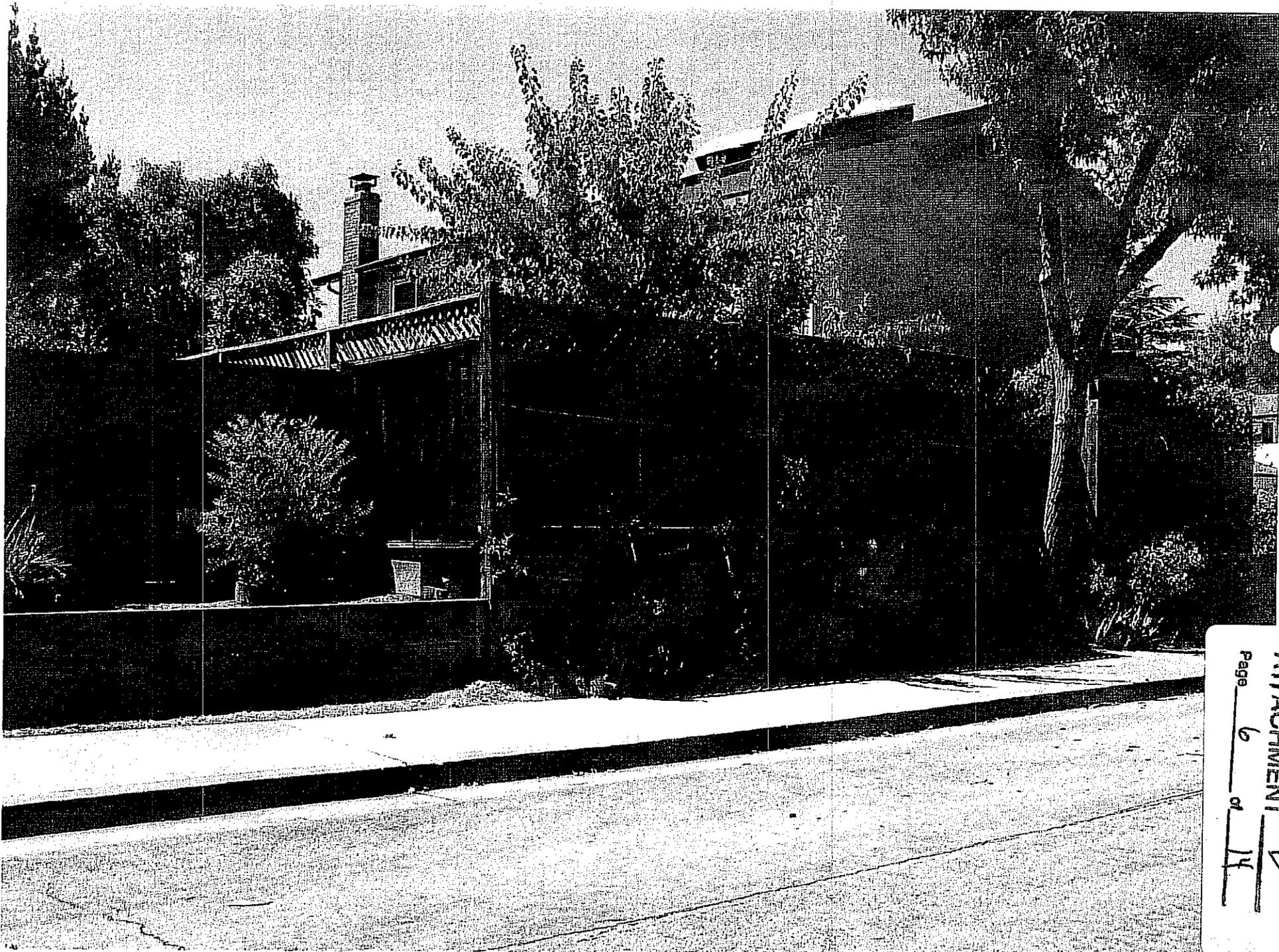
VIEW FROM LONDON BERG AND GOLDFINCH

AUGUST 20



733 LONDONDERRY SIDEYARD AND REAR (SOUTH SIDE) FENCE
FENCE INSTALLED 2006

AUGUST 2007



ATTACHMENT E
Page 6 of 14

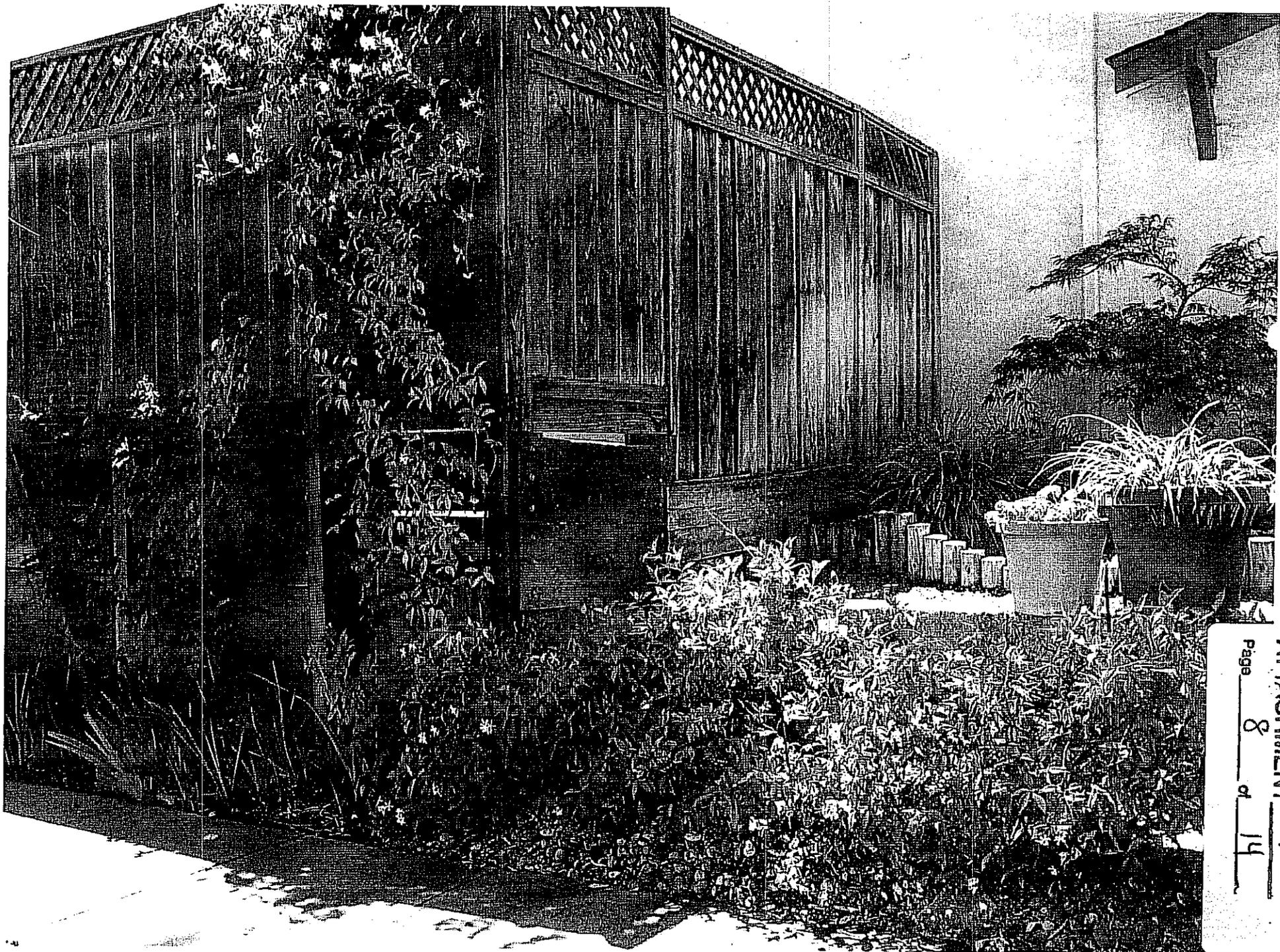
GOLD FINCH VIEW

AUGUST 2007



FENCE STRUCTURE

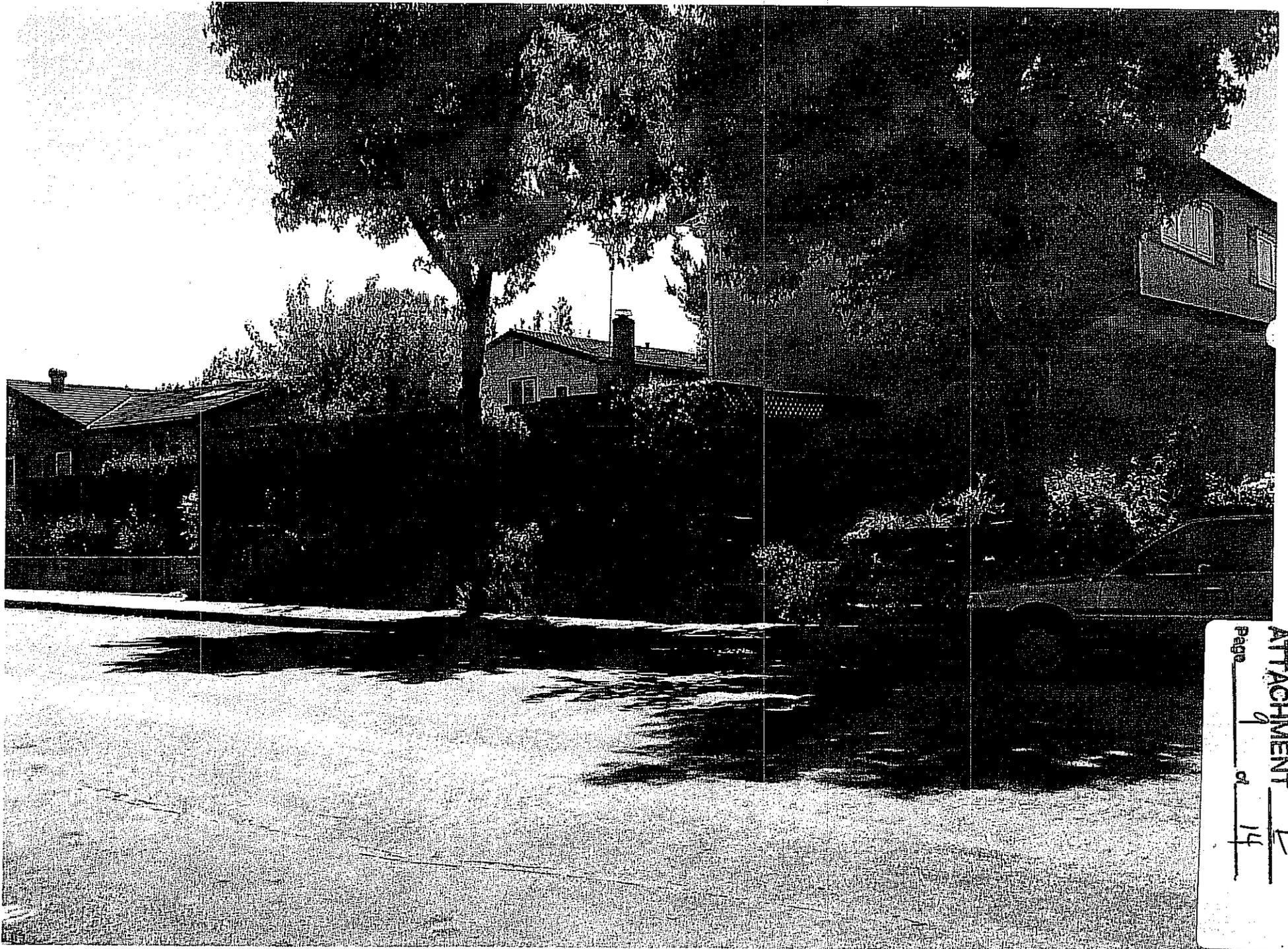
AUGUST 2007



NORTH SIDE FENCE AND GATE SHOWING REAR YARD ELEVATION

AUGUST 2007

ATTACHMENT E
Page 8 of 14



VIEW OF FENCE FROM NORTH

AUGUST 2007

ATTACHMENT E
Page 9 of 14



FENCE VIEWED FROM REARYARD LEVEL

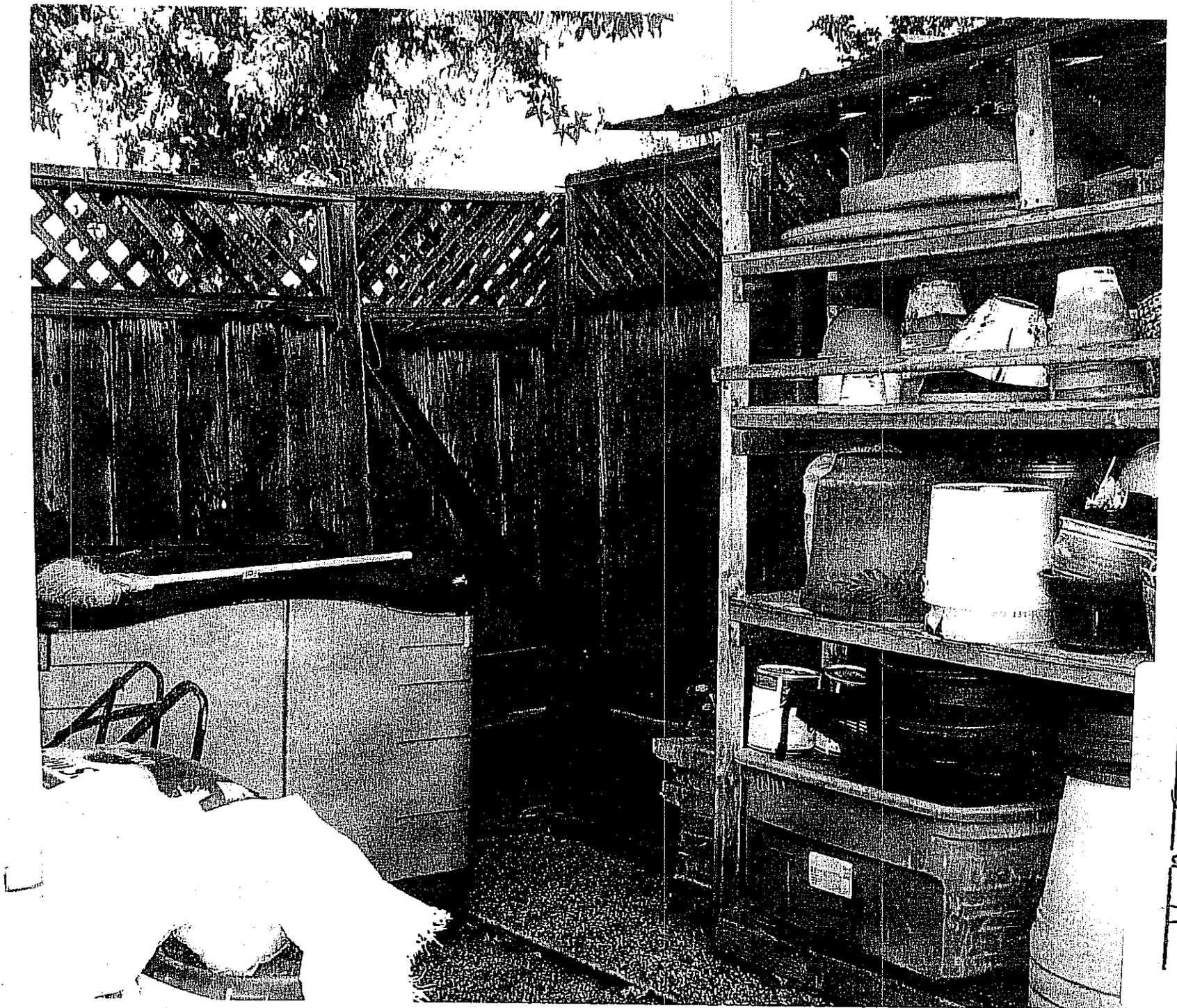
AUGUST 2007



ATTACHMENT E
Page 10 of 14

SOUTH EAST CORNER OF REAR YARD - GOLDFINCH SIDE

AUGUST 2007



NORTH EAST CORNER, PAVED AND INCLINED 6" TO DRAIN WATER AWAY FROM HOUSE
LOWEST POINT IN THE BACK YARD.

AUGUST 2007



ATTACHMENT E
Page 12 of 14

REAR YARD 8' SECTION AROUND LIQUID AMBER

AUGUST 2007



ATTACHMENT E
Page 14 of 14

STORAGE SHED: 6'H X 4'W X 9'D, WEDGED ON EAST SIDE TO LEVEL

AUGUST 2007

**REQUEST FOR PERMIT
EXISTING FENCE OLDER THAN 20 YEARS
HEIGHT EXCEEDING 7 FEET**

Property: 734 Liverpool Way, Sunnyvale, CA at the corner of Goldfinch Way

Petitioner: Dorothe M. Cox, owner/resident since January 1, 1970

RE: Neighborhood Preservation Case 2007-1536

This request for permit is in compliance with Notice of Compliance Letter dated June 18, 2007, item 1 (item 2 is not my property; item 3 has been eliminated).
Violation cited SMC Section-19.48.020. Fences or hedges or other objects in yards.

- (a) General Requirements.
- (1) Legal nonconforming fences may be maintained, however, whenever fifty percent or more of the length of such fence is replaced, the entire length shall be made to conform to the requirements of this section.
 - (2) Fences in existence as of April 1, 1991, on residential lots that front on two public streets that do not intersect at the boundary of the lot ("through lots") may be reconstructed at their existing heights and locations where such fences front on a major public street.
 - (3) Fence heights within front yards, reducible front yards, or any vision triangle shall be measured from the top of the nearest public curb. Fence height within rear or side yards shall be measured from the highest finished grade.
- (c) Permits required for fence installations are as set forth in Table 19.48.020 (Ord.2623-99 Subsection 1 (part): prior zoning code Subsection 19.44.100).
Required front yard and reducible front yard >7' and over; use permit and building permit required.

IN COMPLIANCE with the above cited notice I, Dorothe Cox, appeared at the One-Stop Permit Center to apply for a permit. I spoke with several people from Neighborhood Preservation and the Planning Department who explained what was necessary and asked me hold off submittal until they could research the files for my property. On Monday, July 16, 2007 I received a phone call from the Planning Department stating that they could not find the original permit issued to Admiral Pools in 1974 and that I would have to file for a permit.

IN RESPONSE to this phone call, on July 17, 2007, I appeared at the One-Stop Permit Center and again spoke with a Planner in order to find out what was required of me in the process of filing for a permit. At their advice I submit the following.

BASIC INFORMATION

- 1) The residence at 734 Liverpool Way was purchased by me during construction in August 1969; construction was completed and escrow was closed in December 1969; residency was established January 1, 1970.
- 2) The Builder, McLean Homes, installed the fencing for the entire tract as each section was completed. The last section, containing the home in this case was completed late 1969.
- 3) The original grade for the house was sloped toward Liverpool and toward Goldfinch with the fence established at a point at the top of the steep slope (approximately 4 feet in from the sidewalk). The flat grade level of the rear yard was approximately 40-44 inches above curb level.
- 4) In the spring of 1970 landscaping was done by Little and Lowry to the front and rear yards. At that time a driveway was established on the Goldfinch side for access to the rear yard and an 8' gate was placed in the fence approximately 10' from the rear property line and at the same location as the original fence. This gate of necessity had to swing outward into the street when opened because of the steep incline of the driveway.
- 5) In 1973 Admiral Pools was contracted to install an in-ground swimming pool in the rear yard and construction was completed in 1974. Excavation and a new grading for the pool was done to meet the requirements at that time which required that the grade level must be even with the highest water mark of the pool. To meet the set back regulations the flat grade level extended 11' from the coping on the pool toward the Goldfinch side (east). To maintain this level, a retaining wall was established at a height of 46" above curb level and 30' from the sidewalk edge. The grade was and is 42" above sidewalk level. To meet safety regulations a protecting fence of 54" height was set atop but not connected to the retaining wall. This produced an overall height of 100" (8'4") from curb height with a 30" set back from the sidewalk edge. See Photo 2 and Figure 1.
- 6) During the earthquake of 1989 this swimming pool and the pool next door were subjected to rolling tremors which caused them to react much like a pan of water when it is swung from side to side. This "sloshing action" caused water from the pool next door to break through the fence on the west side and join with the water from this pool on a journey eastbound that took out the center panel section of the fence as a single piece. With much difficulty the 8' panel was refitted into the fence between the support posts. This portion of the fenced rear yard is old style tongue and groove panels set in window box frames between the posts. At this time, a decorative 15' lattice box was added to the top of this fence to match the height on the rear fence that had been established by that neighbor. This brought the height of the fence to 115" (9'7") as it exists today.
- 7) The South, North and West side fences were replaced in 2001 with current style fencing and they are already showing signs of deterioration that is not present in the much older East fence even after more than two decades.

- 8) There is a 30" area between the sidewalk and the retaining wall which is planted in rose bushes and a variety of plants in different heights which bloom different seasons of the year and cover at least the height of the retaining wall and sometimes higher. The bougainvillea planted at the backside of the fence in the rear yard was trained to cascade down over the top of the fence to add more color. Note: this plant suffered frost bite during last winter's heavy frosts and is just now reaching the top of the fence again. By next spring, it will once again provide color and beauty for the neighbors. It must be said here that this side of the property cannot be viewed from the house, the front yard or the rear yard and is maintained solely for the neighbors and the pedestrians in our community.

See Figure 1

FENCE CONSTRUCTION

- Support Poles:** The support poles are treated exterior grade 6" X 6" X 12' poles that are set 33-36" below ground and surrounded in the hole by cement with a 10-12" diameter.
- Retaining Wall:** The planks used for the retaining wall are treated 2" X 12" X 8' and 2" X 10" X 8' of seasoned wood which are bolted to the posts on the backside so that they are held between the support posts and the earth behind it. Where the planks meet at the posts is reinforced with steel plate.
- Fence Panels:** The fence panels are treated seasoned redwood boards 1" X 8" beveled and routed to act like tongue and groove paneling. There are 13 boards in each 8' section. Each section is framed with 1" X 2" treated seasoned redwood trim boards on all sides front and rear. There is a 1" X 4" kickboard and a 2" X 4" cap. Decorative 12" lattice grid is framed on all four sides, front and back, with 1" X 1" wood trim boards, a 1" X 4" foot and a 2" X 4" cap.

Each panel section is secured to the facing support post sides by deck screws and supported/held in position with 2" X 4" X 4" blocks securely attached to the posts and the base of the panels with deck screws.

These panels are primarily 8' sections with an exception around the City Liquid Amber tree. This section has one 4' panel section, two 2' sections and one 3' section to form an inset depth of 54" around the tree in an 8' width. See Figure 2.

Fence Measurements: The total length of the fence along Goldfinch is 39'4" measured from the rear property line. The total depth of the lot is 110'2" which would put the length of the fence at approximately 35% of the total depth and leaving 70'10" to the property line at the corner of Liverpool and Goldfinch. There are three distinctive sections to this fence: a 20'4" section starting at the rear property line/rear fence, the 8' set back for the tree, and an 11' section ending at the north end junction with the north facing fence and gate.

This north facing section (parallel to Liverpool) has a 30" gate secured from the rear yard, which cannot be opened from outside the fenced area, and 12' of fencing in one 8' section and one 4' section abutting the east wall of the house. There are no windows on this side of the house facing Goldfinch.

Compliance and Alternatives

There are two City Ordinances involved in this decision: The fence height requirement under 7' measured from the curb for fences along public streets and the pool child safety regulations requiring a 5' fence around in-ground swimming pools. To reduce the height at curb level to 7' would cause the fence protecting the pool to be lowered to 40" above grade level for the rear yard and would allow easy access from the street by way of the neighbors tiered landscaping (See Photo 1).

Possible alternative solutions:

- 1) Leave the fence as is and allow the permit based on the fact that it has existed at its current height since 1989 and at 8'4" since 1974, until such time as it becomes necessary to replace the fence in totality or more than 50% of the existing fence.
- 2) Approve a permit for a height on the street side to 8'2" which can be accomplished by removing the decorative lattice atop the fence. However, this would reduce the rear yard height to a 54" (6" below the required 60" for child pool safety and may require a waiver from Public Safety).
- 3) Deny the Permit by enforcing the 7' Rule (curb height) lowering the fence to 3'2" as measured from the rear yard grade (and neighboring yard tiered landscaping. See Photo 1) and assume the moral responsibility and legal liability for any wrongful deaths caused by the forced removal of this pool protection.

Plea

I respectfully request your approval of the fencing permit under Alternative 1 above.

It is my sincere desire to comply with the ordinances and codes established by the City and Planning Commission for the betterment of the entire community. I support the City of Sunnyvale and the Staff in their tedious task of responding to complaints and enforcing the regulations in place.

There has never been a complaint made or even a neighborly request to change or remove this fence during the 30 years of its existence. I maintain the fence with my best efforts and have it treated bi-annually to make sure that it doesn't harbor destructive pests or become a hazard in any way. I realize that in the 1970's and 1980's very little was done to beautify that side of the property because I was a single parent attempting to raise my children by working two jobs and finding time to attend to their needs. After retiring from the City and recovering from a devastating illness, I had more time, but very little money so my treatments were small. Once I was physically well enough to pursue income producing activities, I began to beautify the Goldfinch side of the property for the benefit of the neighbors across the street and all those that passed by.

There have been no complaints prior to this one; what I have received and continue to receive are compliments and praise for the enjoyment that these flowers provide to all who would see them.

I realize that this has nothing to do with the fence per se, but the fence is the backdrop and in a year or two the vines that have been started will cover it and make it even more pleasurable to the eye.

Please approve my request for permit to allow the fence to remain as is until such time as it must be replaced for wear and safety.

Thank you,

Dorothe M. Cox
734 Liverpool Way
Sunnyvale, CA 94087
408-736-4370



(2) Except as permitted by use permit or miscellaneous plan permit, it is unlawful for fences, hedges, or other natural or structural objects, except trees, to exceed three feet in height within the required front yard.

(c) Permits required for fence installations are as set forth in Table 19.48.020. (Ord. 2623-99 § 1 (part); prior zoning code § 19.44.100).

TABLE 19.48.020

Fence Permitting Requirements

Fence Location	Fence Height	Permit Required
<u>Required front yard and reducible front yard</u>	Up to 3'	Miscellaneous plan permit (no fee)
	>3' - 6'	Miscellaneous plan permit
	>6' - 7'	Miscellaneous plan permit ¹
	>7' and over	Miscellaneous plan permit ¹ and building permit <u>Use permit and building permit</u>
Side or rear yard	Up to 6'	No permit required
	>6'-7'	Miscellaneous plan permit ² and building permit
	>7'	Use permit and building permit
Corner or driveway vision triangle	Up to 3'	Miscellaneous plan permit (no fee)
	>3'	Variance and building permit
Area between required front yard and house	Up to 6'	No permit required
	>6'-7'	Miscellaneous plan permit ² and building permit
	>7'	Use permit and building permit

ADDRESS ALL MAIL TO: P.O. BOX 3707 SUNNYVALE, CALIFORNIA 94088-3707

TDD (408) 730-7501

♻️ Printed on Recycled Paper

USE PERMIT JUSTIFICATIONS
NP Case 2007-1536

- 1) "attains the objectives and purposes of the General Plan of the City of Sunnyvale",

Although this mid-block fence is above the 7' height restriction, great pains have been taken to improve the presence of its appearance so as to be non-offensive to the viewer. The fence in its current structure is covered for the lower 3-4' by flowering plants of varying heights, colors and blooming seasons. The upper section is draped by flowering plants and overhanging tree branches. There is a decorative 15" lattice section at the top of the fence, but this could be removed to lower the height of the fence. The length of the fence is broken into sections of 20', 8' (inset around the City Liquid Amber Tree) and 11'. The pattern of the fencing itself gives variety to the viewer. This fence has been in its present location since 1974 and at its current height since 1989.

- 2) "is desirable and not materially detrimental to the public welfare or injurious to the property, improvements or uses within the immediate vicinity and within the zoning district.

This quiet residential street has much pedestrian traffic and appeals to the walkers, strollers and bike riders. This particular fence, and yard of which it is a part, receive numerous compliments and bring pleasure to passers-by, even those in vehicles. The fence also provides the protection required for the in-ground swimming pool in the backyard which is approximately 4' above curb level. To reduce the height of this section of the fence would give easy access to the pool from the neighbor's terraced yard on the south side of this property. It is well away from the corners and does not impair vision around the corners for vehicles or pedestrians.

September 11, 2007

To: Maryjo Hodge for the Planning Department
From: Wendie Cox, 734 Liverpool Way, SV 94087
RE: 2007-0822 Hearing set for 9/12/07 2PM

I am formally requesting a continuance of this matter in order to address the changes added to the original complaint, and notification made to me on Friday, 9/7/07, 4PM. Materials and information required to address this new issue will not be available in time for the current hearing.

The earliest that the survey results can be expected is 3-4 weeks.

I am requesting a continuance of 5 weeks or more to obtain the surveyor's report and legal consultation.

Thank you,

Wendie Cox

RECEIVED

SEP 11

PLANNING DIVISION

Mariya Hodge - Response to Letter from Tarabanovic

From: "Dorothe Cox"
To: "Mariya Hodge" <MHodge@ci.sunnyvale.ca.us>
Date: 9/12/2007 10:26 AM
Subject: Response to Letter from Tarabanovic
Attachments: Liverpool Tarabanovic Complaint.jpg

Attention: Mariya Hodge
Date: 9/12/07
File: #2007-0822
RE: Response to letter from Gil Tarabanovic dated 9/6/07

Dear Mariya,

It surprised me greatly that Mr. Tarabanovic has had the information about my property since June 11, 2007 and never mentioned it to me. If he had, I would have taken steps to research this information myself and make the property corrections. Mr Tarabanovic states that I have "this information and knows the location of her property line. She should have known this."

This is untrue. I do not have nor I ever had this information. Over the past 37 years I have been given title company and title insurance reports, preliminary title reports and County Assessor maps, and none of these indicate anything of this nature. The information about the "City Property" within my boundaries is not accessible on the internet. A Characteristic map must be obtained from the County Assessor's office in San Jose in order to see this information. I have ordered and paid for such a map, but it will not reach me until next week. In order to receive this information, I had to supply them with a specific address. I have to ask myself, "why did Mr. Tarabanovic single me out to obtain this information, or has he also gone to the trouble to find out about all the other houses on Goldfinch?"

I have always strived to comply with all City, County and State laws. Now that it has been brought to my attention, I am already taking action bring the property into compliance.

This item was not part of the original complaint nor was it brought up any time prior to September 6, 2007. My request for a continuance until October 24, 2007 would allow me the time for the surveyor to do his report and to seek counsel from my Real Estate attorney.

In response to Mr. Tarabanovic's Solution: The retaining wall is 44" from curb height to top. The fence is not reliant on the retaining wall; it could be moved back to the proper location. The plants that are currently on the inside of the fence would then be on the outside (public) side of the fence. They would love the added attention and would grow even better than they do now in the shade of the fence. My trees are back far enough that they would still be on the inside of the fence. The survey will tell me where the fence should be located and I can prepare the layout plan for the Hearing Committee.

Thank you for your understanding and patience,
Dorothe Cox

cc: Lerman & Lerman

**REQUEST FOR PERMIT
EXISTING FENCE OLDER THAN 20 YEARS
HEIGHT EXCEEDING 7 FEET**

Property: 734 Liverpool Way, Sunnyvale, CA at the corner of Goldfinch Way

Petitioner: Dorothe M. Cox, owner/resident since January 1, 1970

RE: Neighborhood Preservation Case 2007-1536

This request for permit is in compliance with Notice of Compliance Letter dated June 18, 2007, item 1 (item 2 is not my property; item 3 has been eliminated); response to added complaint in Attachment F.

Violation cited SMC Section-19.48.020. Fences or hedges or other objects in yards.

- (a) General Requirements.
 - (1) Legal nonconforming fences may be maintained, however, whenever fifty percent or more of the length of such fence is replaced, the entire length shall be made to conform to the requirements of this section.
 - (2) Fences in existence as of April 1, 1991, on residential lots that front on two public streets that do not intersect at the boundary of the lot ("through lots") may be reconstructed at their existing heights and locations where such fences front on a major public street.
 - (3) Fence heights within front yards, reducible front yards, or any vision triangle shall be measured from the top of the nearest public curb. Fence height within rear or side yards shall be measured from the highest finished grade.
- (c) Permits required for fence installations are as set forth in Table 19.48.020 (Ord.2623-99 Subsection 1 (part): prior zoning code Subsection 19.44.100).
Required front yard and reducible front yard >7' and over; use permit and building permit required.

IN COMPLIANCE with the above cited notice I, Dorothe Cox, appeared at the One-Stop Permit Center to apply for a permit. I spoke with several people from Neighborhood Preservation and the Planning Department who explained what was necessary and asked me hold off submittal until they could research the files for my property. On Monday, July 16, 2007 I received a phone call from the Planning Department stating that they could not find the original permit issued to Admiral Pools in 1974 and that I would have to file for a permit.

IN RESPONSE to this phone call, on July 17, 2007, I appeared at the One-Stop Permit Center and again spoke with a Planner in order to find out what was required of me in the process of filing for a permit. At their advice I submit the following.

IN RESPONSE to the complaint by Gil Tarabanovic (Attachment F Page 1) dated September 6, 2007 I called the Planning Department on September 7th when I found out about the complaint by pulling up the Case on the City Web Site, to ask what was required to provide the information needed for the Hearing scheduled for October 24, 2007. A request was made that I have a survey done to establish the property line on the Goldfinch side. There was not enough time to have that done before the hearing, so it was continued until October 24th. After much difficulty in finding a surveyor to do the work and getting an appointment to have it done, the report was still not ready on October 19th and I requested a further continuance until the Hearing date of November 14th. (See Attachment; Survey of Goldfinch property line).

BASIC INFORMATION

- 1) The residence at 734 Liverpool Way was purchased by me during construction in August 1969; construction was completed and escrow was closed in December 1969; residency was established January 1, 1970.
- 2) The Builder, McLean Homes, installed the fencing for the entire tract as each section was completed. The last Tract section, containing the home in this case, was completed late 1969. (See approved/recorded Plot Map for Tract 4686)
- 3) The original grade for the house was steeply sloped (approximately 20% incline) toward Liverpool and (approximately 39% incline) toward Goldfinch with the fence established at a point at the top of the steep slope (approximately 6 feet in from the sidewalk). The flat grade level of the rear yard was approximately 44 inches above curb level.
- 4) In the spring of 1970 landscaping was done by Little and Lowry to the front and rear yards. At that time a driveway was established on the Goldfinch side for access to the rear yard and an 8' gate (two 4' sections locked in place by metal rods into holes drilled in the concrete) was placed in the fence approximately 10' from the rear property line and at the same location as the original fence. This gate of necessity had to swing outward into the street when opened because of the steep incline of the driveway.
- 5) In 1973 Admiral Pools was contracted to install an in-ground swimming pool in the rear yard and construction was completed in 1974. Excavation and a new grading for the pool was done to meet the requirements at that time with the grade level even with the highest water mark of the pool coping. To meet the set back regulations the flat grade level extended 10' from the coping on the pool toward the Goldfinch side (east) because of the diving board on that end of the pool. To maintain this level, a retaining wall was established at a height of 46" above curb level and 30' from the sidewalk back edge. The grade was and is 42" above sidewalk level at the point closest to the sidewalk. To meet safety regulations a protecting fence of 54" height was set atop, but not connected to, the retaining wall. This produced an overall height of 100" (8'4") from curb height with a 30" set back from the sidewalk back edge. See Photo 2 and Figure 1.

- 6) During the earthquake of 1989 this swimming pool and the pool next door were subjected to rolling tremors which caused them to react much like a pan of water when it is swung from side to side. This "sloshing action" caused water from the pool next door to break through the fence on the west side and join with the water from this pool on a journey eastbound that took out the center panel section of the fence as a single piece. With much difficulty the 8' panel was refitted into the fence between the support posts. This portion of the fenced rear yard is old style tongue and groove panels set in window box frames between the posts. At that time, a decorative 15' lattice box was added to the top of this fence to match the height on the rear fence that had been established by the neighbor to the south. This brought the height of the fence to 115" (9'7") as it exists today.
- 7) The South, North and West side fences were replaced in 2001 with current style fencing which already showing signs of deterioration that is not present in the much older East side fence even after more than three decades.
- 8) There is a 30" planting strip at sidewalk level between the sidewalk and the retaining wall which is planted in rose bushes and a variety of plants in different heights which bloom in different seasons of the year and cover at least the height of the retaining wall and sometimes higher. The bougainvillea planted at the backside of the fence in the rear yard was trained to cascade down over the top of the fence to add more color. **Note:** this plant suffered frost bite during last winter's heavy frosts and is once again being trained over the top of the fence. By next spring, it will provide color and beauty for the neighbors. It must be said here that this side of the property cannot be viewed from the house, the front yard or the rear yard and is maintained solely for the neighbors and pedestrians in our community. (See Figure 1)

FENCE CONSTRUCTION

- Support Poles:** The support poles are treated exterior grade 6" X 6" X 12' poles that are set 33-36" below ground and surrounded in the hole by cement with a 10-12" diameter.
- Retaining Wall:** The planks used for the retaining wall are treated 2" X 12" X 8' seasoned wood which are bolted to the posts on the backside so as to be held between the support posts and the earth behind it. Where the planks meet at the posts it is reinforced with steel plate.

Fence Panels:

The fence panels are treated seasoned redwood 1" X 8" X 4' beveled and routed to fit together like tongue and groove paneling. There are 13 boards in each 8' wide section. Each section is framed with 1" X 2" treated seasoned redwood trim boards on all sides front and rear. There is a 1" X 4" kickboard and a 2" X 4" cap. Decorative 12" lattice grid is framed on all four sides, front and back, with 1" X 1" wood trim boards, a 1" X 4" foot and a 2" X 4" cap.

Each panel section is secured to the facing support post sides by deck screws and rest upon 2" X 4" X 4" blocks securely attached to the posts with deck screws.

These panels are primarily 8' wide sections with the exception of the indented section around the City Liquid Amber tree. This indented section has one 4' panel section plus one 3' section and the posts at the back, two 2' sections at the sides to form an inset depth of 54" around the tree in an 8' width. (See Figure 2.)

Fence Measurements: The total length of the fence along Goldfinch is 39'4" measured from the rear property line. The total depth of the lot is 110'2" which would put the length of the fence at approximately 35% of the total depth and leaving 70'10" to the back edge of the sidewalk at the corner of Liverpool and Goldfinch. There are three distinctive sections to this fence: a 20'4" section starting at the rear property line/rear fence, the 8' inset for the tree, and an 11' section ending at the north end junction with the north facing fence and gate.

This north facing section (parallel to Liverpool) has a 30" gate secured from the rear yard, which can only be opened from inside the fenced area, and 12' of fencing consisting of one 8' section and one 4' section abutting the east wall of the house. There are no windows on this side of the house facing Goldfinch.

Compliance and Alternatives

There are two City Ordinances involved in this decision: 1) The fence height requirement of less than 7' measured from the curb height for fences along public streets and 2) the child safety pool regulations requiring a 5' exterior fence where in-ground swimming pools are installed. To reduce the height of the fence at curb level to 7' would cause the fence height on the pool side to be lowered to 40" above grade level for the rear yard, and would allow easy access from the street by way of the neighbors tiered landscaping (See Photo 1).

Possible alternative solutions:

- 1) Leave the fence as is and allow the permit based on the fact that it has existed at its current height since 1989 and at 8'4" since 1974, until such time as it becomes necessary to replace the fence in totality or more than 40% of the existing fence.
- 2) Approve a permit for a height on the street side to 8'2" which can be accomplished by removing the decorative lattice atop the fence. However, this would reduce the rear yard height to a 54" (6" below the required 60" for child pool safety but a reasonable height).
- 3) Grant an encroachment permit for the current retaining wall at a lowered height of 36' from curb height to prevent soil erosion and move the fence back 3.79' to the property line at a height of 69" including lattice at the top. To remove the retaining wall would expose 44" of soil that will erode and run off onto the sidewalk and the gutter whenever it rains or from irrigation in the backyard.

Plea

I respectfully request your approval of the fencing permit under Alternative 3 above.

It is my sincere desire to comply with the ordinances and codes established by the City and Planning Commission for the betterment of the entire community. I support the City of Sunnyvale and the Staff in their tedious task of responding to complaints and enforcing the regulations in place.

There has never been a complaint made or even a neighborly request to change or remove this fence during the 34 years of its existence. I maintain the fence with my best efforts and have it treated to make sure that it doesn't harbor destructive pests or become a hazard in any way. Since my retirement from the City in 1991 and my recovery from a devastating illness in the mid '90s, I have taken time and as much as I can afford to improve the Goldfinch side of the property for the benefit of the neighbors across the street and all those that passed by.

There have been no complaints prior to this one; what I have received and continue to receive are compliments and praise for the enjoyment that these flowers provide to all who would see them.

Please approve my request for the encroachment permit to allow the retaining wall at the reduced height to remain at its current location and the move back of the fence.

Thank you,
Respectfully submitted by
Dorothe M. Cox
734 Liverpool Way
Sunnyvale, CA 94087
408-736-4370

USE PERMIT JUSTIFICATIONS
NP Case 2007-1536

- 1) **“attains the objectives and purposes of the General Plan of the City of Sunnyvale”,**

Although this mid-block fence is above the 7' height restriction, great pains have been taken to improve the presence of its appearance so as to be non-offensive to the viewer. The fence in its current structure is covered for the lower 3-4' by flowering plants of varying heights, colors and blooming seasons. The upper section is draped by flowering plants and overhanging tree branches. There is a decorative 15" lattice section at the top of the fence. The length of the fence is broken into sections of 20', 8' and 11'. The pattern of the fencing itself gives variety to the viewer. This fence has been in its present location since 1974 and at its current height since 1989. By moving the fence portion only back 3.79' and leaving the retaining wall in its present location, but at a reduced height of 36", it would create a flower bed for additional plantings and add more beauty to the visual scene.

- 2) **“is desirable and not materially detrimental to the public welfare or injurious to the property, improvements or uses within the immediate vicinity and within the zoning district.**

This quiet residential street has much pedestrian traffic and appeals to the walkers, strollers and bike riders. This particular fence, and yard of which it is a part, receive numerous compliments and bring pleasure to passers-by, even those in vehicles. The fence provides the protection required for the in-ground swimming pool in the backyard which is approximately 44" above curb level. It is well away from the corners and does not impair vision around the corners for vehicles or pedestrians. By reducing the height of the retaining wall to 36" and moving the fence back 3.79' the conflict will be resolved with a fence height of only 69" set 6' from the back edge of the sidewalk.

City of Sunnyvale Administrative Hearing

Attention: Mariya Hodge
Date: 9/6/2007
File # 2007-0822
Re: Public Notice at 734 Liverpool Way, Sunnyvale Ca. 98087
Owner: Dorothe M. Cox
Complaining Party: Gil Tarabanovic

RECEIVED
SEP 06
PLANNING DIVISION

On June 11, 2007 I talked with Mr. Steve Frias about the above property and the location of the existing fence. I explained to him that the fence in question was built without a permit and was 3 feet over onto the city property. I also explained that this fence has nothing to do with legal nonconforming fences. It has to do with the property line. I want to know what legal written authorization or city permit allowed Ms. Cox to build her fence over on to city property. I have checked with the City of Sunnyvale and the County of Santa Clara Book of Records. Ms. Cox has this information and knows the location of her property line. She should have known this.

As for the Public Notice, I see that you make no mention of the situation in the notice to the surrounding neighborhood. I find this misleading to our neighbors and they should be informed that Ms. Cox has built her fence over onto city property by 3 feet. For all these years Ms. Cox has had the pleasure of an extra 3 feet for her own sole enjoyment. I've talked with other neighbors about this situation and they also have tried to build their corner lot fences out, but were denied. Since these neighbors have been denied by the city, I see no reason that Ms. Cox should have any privilege over any of our neighbors or any other city resident. This Use Permit to allow Ms. Cox to leave her fence in the existing location should be denied.

Solution: Remove the retaining wall and fence. Set back so that the fence is on her property just like all the other neighbors. Set back should 11 ft from face of curb.

Thank You
Gil Tarabanovic

Please enclose this letter to staff report and any other future meetings.
Cc: Susan Chung, Esq.

City of Sunnyvale Administrative Hearing

Attention: Mariya Hodge
Date: 9/12/07
File # 2007-0822
Re: Staff Report

RECEIVED
SEP 12
PLANNING DIVISION

Thank you for getting the report to me A.S.A.P. I do have some concerns about what is written in the report on page 3 under the Analysis. Background, I made 2 complaints to Mr. Frias on June 11, I will only address the fence issue at this time since you seem to be misinformed by Mr. Frias on my complaint. I made know mention of the height of the fence in my complaint, but will inform you that I gave you and Gerri Caruso information on April 25, 2007 at the Administrative Hearing (File # 2007-0278) Ms. Cox's fence is 10 feet tall, not 9'-7" as described in the Public Notice. Please make all corrections in the staff report that say 9'-7" to 10 feet.

As for the recommended denial of the Use Permit, I agree. I do have a concern about the new retaining wall and fence location. If Ms. Cox is to build a new fence, I do not have a problem with it being 8'0" in height so long as it is measured from the top of the adjacent curb and not from the existing grade. On Attachment B page 1 Item 3.Fences D.(The fence shall be set back 4 feet from back of adjacent public sidewalk is wrong.) It should read, set back 6'6" from the back of sidewalk so that the fence is on her property. Remember the public right-of-way is set back 11' from face of curb. Ms. Cox also stated that during the 1989 earthquake her swimming pool combined with the neighbors pool water took out an 8'foot section of fence on the Goldfinch side. Who is to say that this might not happen again. For the safety of the public that walks by, this fence should be designed by a licensed structural engineer an approved by the city engineer.

On attachment E, page 2, item 3, Original Grade. Staff needs to make a site visit and look at two other corner lot properties that are in the same line as Ms Cox's home. Across the street and the property behind her. The one that is across the street is what the original grade used to be. Also please note that both residents have their fences set back 11feet and further. On the north property fence across the street from Ms. Cox there is a civil engineered stake in the ground that identifies exact location of property lines and the set back of the public-right-of-way. I feel that having a civil survey done would only delay the moving of the fence, but if this is to be done it shall not be at the expense of the city. Please see attachment D page 8. You can see daylight through her retaining wall that shows the grade and in front of her fence. The grade towards the rear yard should be at that same plain and should be returned to the original grade just like the neighbor across the street. The grade from the house to the sidewalk fall is between 32" to 36" and 16' feet in length. Not 40-44 inches as written by Ms. Cox. This information is based on the elevation of the existing grades at both of the other properties at the foundation walls.

Although there are other issues that are written in the staff report that need be corrected, I at this time do not have time to make all corrections and will do so in the future.

Sincerely,
Gil Tarabanovic
Cc: Susan Chung, Esq.

PS. Please talk to Mr. Frias about the other complaint on her property that I expressed on June 11, 2007. As this problem still exist today and nothing has been done about it. As you stated to me the last time I saw you, you were not told about Ms. Cox's fence being in the public right-of-way by Mr. Frias.

My name is Kim Thornton. My family and I live to the southeast of Ms. Cox's residence, catty corner to this lot.

RECEIVED

SEP 12

I have a few concerns about the timeline/facts of the staff report.

PLANNING DIVISION

I was present when Mr. Tarabanovic submitted the complaint of June 11th and nothing was mentioned concerning the height of the fence which he knew was considered legal non conforming, only the location. Staff report states a warning letter, dated June 18th was mailed, which requested applicant apply for a Use Permit or remove the fence. On June 25th, an inquiry was made as to the status of the complaint. At that time, staff was reportedly looking into 1975 property law as to the location of the fence. Ms. Cox in her justification letter states the city called her on July 16th, and advised her to take out a Use Permit since the original permit for her pool could not be located; however staff report makes no mention of the pool permit not being found, just permits for the fence and lattice. What the pool permit has to do with the fence is confusing. 12 public notices were mailed to residences and properties adjacent to the site on August 29th, however my residence which sits approximately 80 feet across the street and has full visual vantage of the fence was omitted from the mailing. The public notice stating the proposed project for a Use Permit for the existing fence was posted at the residence on August 30th. On September 6th, Mr. Tarabanovic spoke with Ms. Hodge about the original complaint.. At this time, Ms. Hodge stated that she knew nothing of the original complaint. I understand the Use Permit now is going to pertain to the height of the fence, once it is moved back to the property line, but if staff knew nothing of the what the original complaint was about, what was the reasoning to take out a Use Permit and why did the city request removal of a legal non conforming fence? Obviously a site visit had never been made prior to September 7th when my family and Mr. Tarabanovic witnessed measurements being taken, and staff was relying on the false and misleading information provided by the applicant.

Having full visual vantage of the fence from our front yard, as well as from our living room and kitchen windows, we object to the Use Permit to build the fence at 8'4". Seeing as she built her fence on city property without permits and has openly and freely admitted to altering her grade without permits, we would not oppose an overall fence height, as measured from the top of the curb, of 8 feet providing the fence is high quality and aesthetically pleasing to the eye.

Kim Thornton

Please enclose this letter in applicant's file and future staff reports.

Mariya Hodge - 734 Liverpool Way, Sunnyvale - Fence

From: "Pat Galentine" [REDACTED]
To: <MHodge@ci.Sunnyvale.ca.us>
Date: 10/23/2007 3:24 PM
Subject: 734 Liverpool Way, Sunnyvale - Fence
CC: "Dorothe Cox" [REDACTED]

Hello,

I'm sending you this e-mail relative to the fence belonging to Dorothe Cox at 734 Liverpool Way in Sunnyvale.

In 1972 I lived on Jura Way around the corner from 734 Liverpool Way, and I was best friends with Dorothe's son Richard.

I was frequently in their home and was there in 1974 when the fence was installed after the installation of their pool. The following few years I actually lived in their home while attending Fremont High School. As such I have a very clear and accurate memory as to the existence of the fence at that time, and I remember it being built.

I hope this helps clear up any issues regarding the fence.

If you have any further questions please don't hesitate to contact me directly.

Regards,

Patrick Galentine

Kensington

Real Estate Group

Patrick Galentine, President
KENSINGTON REAL ESTATE GROUP
17542 E. 17th Street, Suite 420
Tustin, CA 92780

[REDACTED]
[REDACTED]

Mariya Hodge - Permit Dispute at 736 Liverpool Way, Sunnyvale

From: charlie vonderach [REDACTED]
To: <MHodge@ci.Sunnyvale.ca.us>
Date: 10/29/2007 2:16 PM
Subject: Permit Dispute at 736 Liverpool Way, Sunnyvale

Dear Sunnyvale building department representative or to whom it may concern,

A dispute over a permit for a homeowners fence and pool, Dorothy Cox at 736 Liverpool Way at the intersection of Goldfinch Way, has recently been brought to my attention. I understand the city is unable to locate the permits for the fence and pool built at this home back when I was Jr. high class president in 1974. I am writing this in support of Ms. Cox's claim that the proper permits were in fact pulled for the subject project. I recall vividly the permit envelope hanging on the fence entering the back yard for the duration of the project. I also know as the long time dispatcher for the Sunnyvale police department and outstanding citizen that it would be totally out of character for Ms. Cox to build something without the proper authorization from the city. I recently built an addition to my house in Livermore and found that building departments generally are challenged with document retention (unable to find original plans for my house only 7 years old at the time) so it is completely understandable that Sunnyvale might be unable to locate a permit document for a fence and pool from 1974. Anyway, I hope this written testimony on Ms. Cox behalf helps you in reconciling this unfortunate neighborly dispute. If you need any further input, don't hesitate to ask.

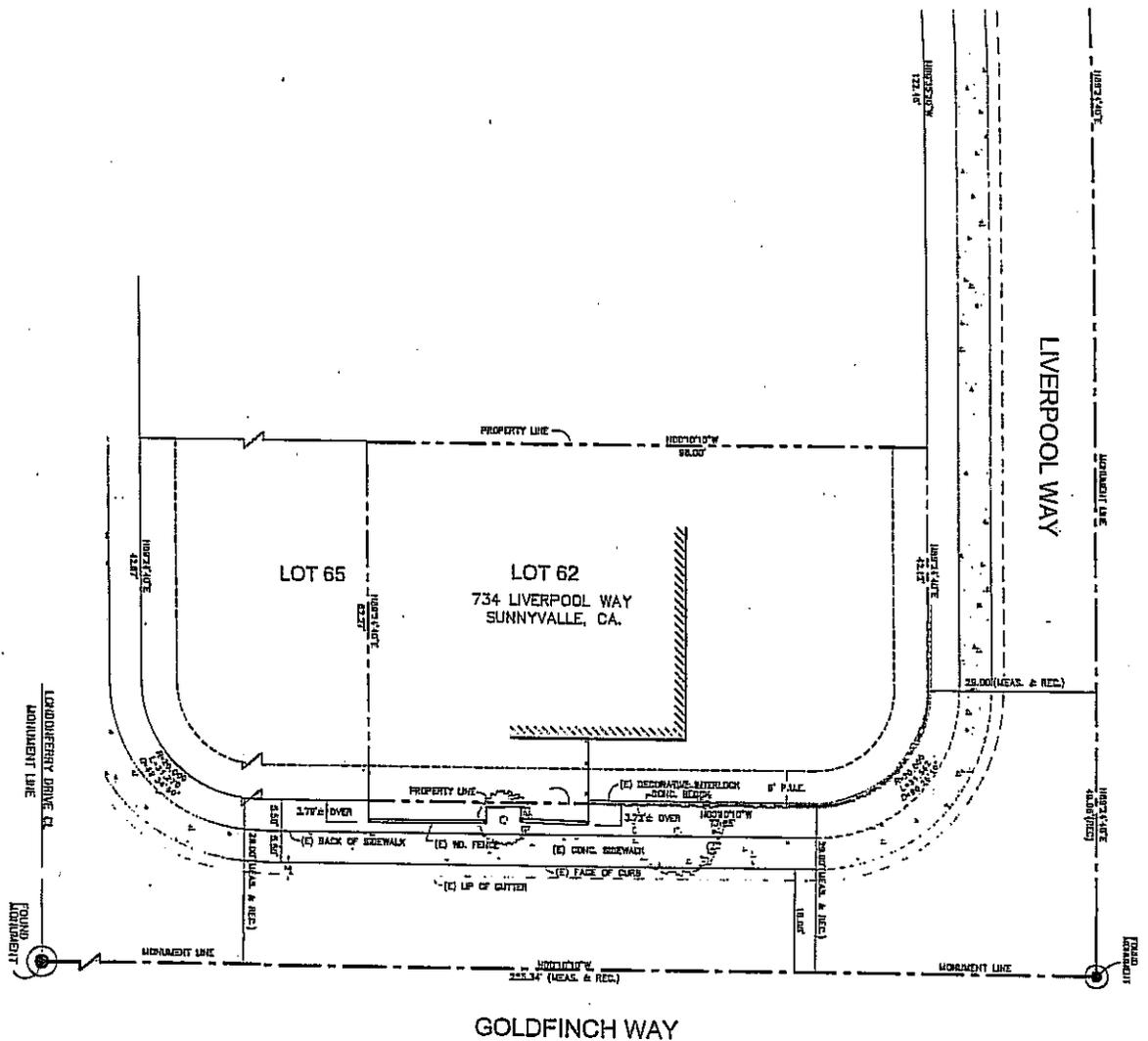
Best regards,

Charlie Vonderach
Sales Director, LSI Corp.
Milpitas, CA 95035
[REDACTED]

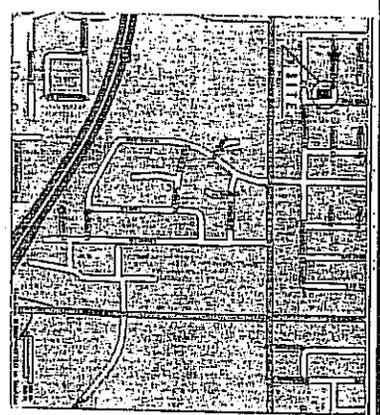
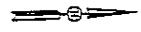
Sunnyvale resident from 1968 to 1985 at 715 Londonderry Drive, 7 houses down from Ms. Cox. My parents still reside at this location and would be more than glad to corroborate Ms. Cox's claim that the proper permits for her fence and pool were established according to Sunnyvale's building requirements.

Do You Yahoo!?

Tired of spam? Yahoo! Mail has the best spam protection around
<http://mail.yahoo.com>



GOLDFINCH WAY



BASIS OF BEARINGS:

THE BEARINGS OF THIS PLAN ARE BASED UPON THE CONTINENTAL MERIDIAN. ANY DISCREPANCY BETWEEN THE BEARINGS SHOWN HEREON AND THE BEARINGS SHOWN ON ANY OTHER PLAN OR RECORD SHALL BE DEEMED TO BE A MATTER OF RECORDING ERROR.

MAP REFERENCES:

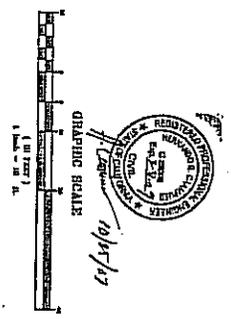
- TRACT NO. 4888 - WASHINGTON SQUARE - UNIT NO. 2.

LEGEND:

- MONUMENT LINE (SOMETIMES LINE)
- PROPERTY LINE
- EXISTING EASEMENT
- EXISTING EASEMENT
- FOUND MONUMENT

ABBREVIATIONS:

- MIB MONUMENT
- PLC PLAIN VERTICAL CURB



GL A Civil Engineers, Inc. 414 Mason Street, Suite 404 San Francisco, CA. 94102-1716 Tel. (415) 955-6707	Civil Engineers Land Surveyors Pls	DRAWN BY: [] CHECKED BY: [] DATE: []
		PROJECT NO.: [] SCALE: []
NIA MERRINDO C. DAMPUS	R.C.C. 3000	DATE: [] DESCRIPTION: []



**CITY OF SUNNYVALE
ADMINISTRATIVE HEARING**

MINUTES

Wednesday, November 14, 2007

2007-0822 – Application for a Use Permit to allow an existing nine-foot seven-inch tall wood fence in the reducible front yard. The property is located at **734 Liverpool Way** (near Goldfinch Wy) in an R-0 (Low-Density Residential) Zoning District. (APN: 309-46-008) MH

In attendance: Dorothe Cox, Applicant; Sugmer Singh, Neighbor; Michael Thornton, Neighbor; Kim Thornton, Neighbor; Gil Tarabanovic, Neighbor; Gerri Caruso, Administrative Hearing Officer; Mariya Hodge, Project Planner; Luis Uribe, Staff Office Assistant.

Ms. Gerri Caruso, Administrative Hearing Officer, on behalf of the Director of Community Development, explained the format that would be observed during the public hearing.

Ms. Caruso announced the subject application.

Mariya Hodge, Project Planner, stated that the originally proposed project was to allow an existing 9-foot 7-inch fence in the reducible front yard along Goldfinch Way. The fence consists of a wood retaining wall approximately 3 feet 10 inches in height topped by a 4-foot 6-inch solid wood fence and a 1 foot 3 inches of lattice. The existing fence is set back approximately 2 feet 7 inches from the public sidewalk (see Attachment C – Original Site Plans and Elevations).

The applicant has obtained a property line survey indicating the existing fence encroaches into the public right-of-way by approximately 3 feet 10 inches. As a result of the survey, the applicant is proposing a revised design for the subject fence. The fence will be removed from the retaining wall and relocated to the property line. The fence will consist of solid wood boards approximately 4 feet 6 inches in height with a 1-foot 3-inch lattice top. The retaining wall will be maintained in its current location, but will be reduced to a height of 3 feet (see Attachment D – Revised Site Plans and Elevations). The property owner must record an agreement with the city regarding the retaining wall. Ms. Hodge stated that the applicant will be asking for an extension to the 60 day requirement.

Ms. Caruso opened the public hearing.

Dorothe Cox, Applicant, received and reviewed a copy of the staff report. Ms. Cox stated that she was not aware that her fence was on the public right of way and had a property line survey done. The survey consultant recommended that the fence be pushed back and that the retaining wall must remain for erosion and slippage control. Ms. Cox asked that the retaining wall remain in place and that she will be happy to move the fence back. The applicant stated that she is having financial hardships and is requesting an extension from the 60 day requirement. The applicant stated that she would like to

comply with everything and that at this point, financially, she is not capable of meeting the requirements.

Sugmer Singh, Neighbor, stated that he has lived at his current residence for over 20 years. Mr. Singh also mentioned that the fence has always been the way it is and that Ms. Cox has never done anything to that fence besides add the lattice.

Gil Tarabanovic, Neighbor, stated that he is opposed to the height of the fence. Mr. Tarabanovic stated that the applicant has altered the grade of her property back in the seventy's.

Kim Thornton, Neighbor, stated that the applicant has some shelves and a shed put up against the fence and stated that its not okay for her to have them there.

Michael Thornton, Neighbor, stated that he believes they must get Ms. Cox grade back to the original height.

Ms. Cox stated that her property has always been on a higher grade. The grade of the pool is exactly the same as the foundation of the house. The grade was leveled out when the pool was put in back in 1974. Ms. Cox also stated that the shelves and shed against the fence are free standing and can be moved. The height of the fence that is being moved back is only 5'9" which makes the fence well under 7 feet.

Ms. Caruso closed the public hearing.

Ms Caruso took the application under advisement to review the request for extra time to make the fence modifications until Friday November 16, 2007. Previous fence applications were reviewed. On that day, the Administrative Hearing Officer took action to approve the Use Permit with the findings and conditions of approval located in the staff report, with the following modification:

- **The applicant shall have a period of 120 days from the final decision on the Use Permit to modify the fence as required by the conditions of approval.**

Ms. Caruso stated that the decision is final unless appealed to the Planning Commission with payment of the appeal fee within the 15-day appeal period.

The meeting was adjourned at 2:36 p.m.

Minutes approved by:


Gerri Caruso, Principal Planner

* see 2nd page for discussion of appeal

City of Sunnyvale Administrative Hearing

JAN - 2 2008

Attention: Mariya Hodge
Date: 9/12/07
File # 2007-0822
Re: Staff Report

COMMUNITY DEVELOPMENT DEPT.
CITY OF SUNNYVALE

Thank you for getting the report to me A.S.A.P. I do have some concerns about what is written in the report on page 3 under the Analysis. Background, I made 2 complaints to Mr. Frias on June 11, I will only address the fence issue at this time since you seem to be misinformed by Mr. Frias on my complaint. I made know mention of the height of the fence in my complaint, but will inform you that I gave you and Gerri Caruso information on April 25, 2007 at the Administrative Hearing (File # 2007-0278) Ms. Cox's fence is **10 feet tall**, not 9'-7" as described in the Public Notice. Please make all corrections in the staff report that say 9'-7" to **10 feet**.

As for the recommended denial of the Use Permit, I agree. I do have a concern about the new retaining wall and fence location. If Ms. Cox is to build a new fence, I do not have a problem with it being 8'0" in height so long as it is measured from the top of the adjacent curb and not from the existing grade. On Attachment B page 1 Item 3.Fences D.(The fence shall be set back 4 feet from back of adjacent public sidewalk is wrong.) It should read, set back 6'6" from the back of sidewalk so that the fence is on her property. Remember the public right-of-way is set back 11' from face of curb. Ms. Cox also stated that during the 1989 earthquake her swimming pool combined with the neighbors pool water took out an 8' foot section of fence on the Goldfinch side. Who is to say that this might not happen again. For the safety of the public that walks by, this fence should be designed by a licensed structural engineer an approved by the city engineer.

On attachment E, page 2, item 3, Original Grade. Staff needs to make a site visit and look at two other corner lot properties that are in the same line as Ms Cox's home. Across the street and the property behind her. The one that is across the street is what the original grade used to be. Also please note that both residents have their fences set back 11 feet and further. On the north property fence across the street from Ms. Cox there is a civil engineered stake in the ground that identifies exact location of property lines and the set back of the public-right-of-way. I feel that having a civil survey done would only delay the moving of the fence, but if this is to be done it shall not be at the expense of the city. Please see attachment D page 8. You can see daylight through her retaining wall that shows the grade and in front of her fence. The grade towards the rear yard should be at that same plain and should be returned to the original grade just like the neighbor across the street. The grade from the house to the sidewalk fall is between 32" to 36" and 16' feet in length. Not 40-44 inches as written by Ms. Cox. This information is based on the elevation of the existing grades at both of the other properties at the foundation walls.

JAN - 2 2008

Although there are other issues that are written in the staff report that need be corrected, I at this time do not have time to make all corrections and will do so in the future. COMMUNITY DEVELOPMENT DEPT.
CITY OF SUNNYVALE

Sincerely,
Gil Tarabanovic
Cc: Susan Chung, Esq.

PS. Please talk to Mr. Frias about the other complaint on her property that I expressed on June 11, 2007. As this problem still exist today and nothing has been done about it. As you stated to me the last time I saw you, you were not told about Ms. Cox's fence being in the public right-of-way by Mr. Frias.

Gil Tarabanovic
Response Letter to Mariya Hodge for My Appeal.
Date: 1/2/2008 File # 2007-0822

Please refer to the above letter dated 9/12/07. Again, I continue to explain that the existing fence is 10'-0" high if not higher. Please send someone out from the city that is qualified to read a measuring tape. You also make no mention of the height of the existing fence that faces Liverpool Way. What is going to be the overall height of that fence when complete? Ms. Cox altered her grades to be higher than what the existing developer intended and built a fence on top of her new grade. Again, the existing grade that is on the north side of the existing fence is what it used to be and should be returned to that grade. Behind her property at 733 Londonderry Dr .and Goldfinch Way is an existing fence that is acceptable to our neighborhood. The overall height of that fence is what Ms. Cox's fence should match. That neighbor has a 2' high retaining wall and a 6' high fence set back on their property. This fence should be reviewed by the Planning Commission or someone from the City Council before our January 28, 08 meeting. Again, Ms. Cox should measure from the top of the adjacent curb and her fence be no higher than 8'-0" from that point.

Ms. Cox should be required to have a Licensed Structural Engineer design her fence and have a complete set of drawings showing exactly what is going to be built, stamped and approved. The existing fence and retaining wall where built without permits and have no verification of what exist. The drawing in the staff report, Attachment C page 2 of 2 is not proof of what exists. How do we know that the footings are 3'-0" deep and are structural and sound. The City should require a Building permit and nothing less. I want to remind you, Ms.Hodge. That this is exactly what was required of Mr. & Mrs. Thornton and I see no reason that this should not apply to Ms. Cox.

Sincerely
Gil Tarabanovic

RE: appeal

RECEIVED

JAN 29

PLANNING DIVISION

January 30, 2008

TO: Staff, Planning Commission

Attn: Mariya Hodge

RE: 2007-0822 Comments toward Tarabanovic communiqué

Thank you for the copy of the "Grounds For Appeal" from Mr. Tarabanovic dated 01/02/08 and for allowing me to delay the hearing in order to recover from bronchial pneumonia. It has taken a significant amount of time to try and understand some of the statements made by Mr. Tarabanovic in his Appeal, but I shall try to address them in the order in which they appear. Please keep in mind that I did not file the appeal and I fully accept the ruling of Gerri Caruso and the Staff; I am quite willing to comply.

1. Request to change the staff report regarding the height of the fence: The fence has been measured by me and City Staff members and the height from the backyard was measured by the contractors giving estimates. We all came to within one inch of each other with a variation from 9'6.5" to 9'8" which would average out to 9'7.25".
2. Fence height as measured from "top of the adjacent curb and not from existing grade": It is my understanding that the fence height is measured from curb height OR from the backyard level to a height necessary to assure privacy. The new fence will measure 5'9" after it is moved back to the property line in order to match the height of the fence which separated 734 Liverpool from 733 Londonderry.
3. Setback: The Recorded Survey indicates that it is 5.5' from the face of the curb to the back edge of the sidewalk and 5.5' from the back edge of the sidewalk to the property line (3.72' – 3.79' west of the existing fence/retaining wall). The Survey measures the Goldfinch Street side (East) P.U.E. from the property line westerly for 6'. This would put it approximately 6' from the East wall of my house. By the same ruling, it would put the P.U.E. inside the house at 733 Liverpool. That house's East wall is approximately 6' from the back of the sidewalk.
4. Earthquake/safety of public "walking by": It should be noted that the section of fence affected by the water surge created by the 1989 earthquake was caused because there were two swimming pools involved – 732 and 734 Liverpool. The pool at 732 Liverpool was filled with dirt and lawn planted in the mid-1990's. The fence held except for one panel that took the brunt of the surge and tore the nails loose from their support posts. The panel remained intact and was laid over onto the sidewalk. The fence has existed with no public threat for 34 years.
5. Need for a licensed structural engineer: The existing support posts have been in place for 34 years through various earthquakes, heavy rains and high winds without any indication of weakness. Who would be walking along the sidewalk under such conditions?
6. Original Grade compared to other properties: It is obvious from the foundation of the house that the original grade is the same as it was when the house was built in 1969. If anything, it would be lower as the ground settles. It is true that the earth was steeply slanted from the property line to the backside of the sidewalk (5.5' to drop from 44" to curb height). To prevent erosion, the landscapers planted grass

and put in an 8' concrete driveway. It was impossible to mow the grass properly because of the slant. It should be noted that my backyard is the same height as the neighbor's backyard at 733 Londonderry. The houses on the North side of Liverpool are all at a lower elevation than the houses on the South side of Liverpool. Therefore, the house at 733 Liverpool has always been at a lower elevation than 734 Liverpool. It's the topography of the land and the way the streets were laid that causes the differences. The houses on the West side of Goldfinch which back up to the court streets are a higher elevation than the East side of Goldfinch.

7. "Daylight through her retaining wall that shows the grade": When the retaining wall was built in 1974, it was done at 48" because the lumber used was 2"X12". The dirt actually only came to approximately 4" from the top of that board. Over 30 years the ground has settled; we purposely lowered the side along the Goldfinch fence so that runoff would drain toward the street. The lowest point in the backyard is the Northeast corner. The fence is at that height so that it makes an even line from the fence at the wall of the house. The Southeast corner is also lower than the center because we needed a gravel path around the vegetable garden. This won't be a problem under the approved plan because the fence will be west of that point and the retaining wall will only be 36" high. I have no idea where the statement "between 32" to 35" and 16' in length" comes into the picture. The level of the backyard is definitely 42-44" elevation as compared to the sidewalk. Where did the 16 feet come from?
8. I have no knowledge of what was in Mr. Tarabanovic's complaint to Mr. Frias. I have already complied with the letter that I received from Mr. Frias to his satisfaction, except for the fence permit which is still being settled. I have spoken to the Public Works department and they have given me instructions and paperwork to apply for an Encroachment Permit to go along with my Fence Permit, but I cannot file anything until this case is settled.
9. Altering the grade to be higher than what the existing developer intended: The answer to this is NO. If anything, the grade is lower now because of settlement and the truckloads of dirt that were removed to put in the swimming pool in 1974; the drainage had to be away from the house so a leach-line was built into the pool surround at a lower elevation than the foundation.
10. Fence at 733 Goldfinch is acceptable: When complete, my fence will be at the same height and set-back as the neighbor's at 733 Londonderry. Their first retaining wall is 2' high, but their second retaining wall set back two feet from the first adds another 18" to the elevation.
11. Visit by the City Council to my property: I have no problem with this, but why would they? The Planning Commission is also invited to visit anytime they wish. The fence has been there since 1974 and never been a problem or had a complaint until I made the mistake of voicing my opinion regarding the fence going up at 1674 Goldfinch.
12. Licensed Structural Engineer design the fence: In reality, I don't even need a licensed contractor if the fence is within my property line and less than 7' high.
13. Proof of original permit: It is true that the City has not been able to locate the permit that was issued for the pool and fence installation back in 1974. I know we

had one, but I have no idea where it is now after 34 years. I trusted the City to keep the records; however, a few years back the City outsourced the task of putting everything into computerized records and it would appear that the records for 734 were combined with the records of 732 Liverpool. I am sure that a company as large as Admiral Pools had all the permits they needed for the work that was done.

14. Structural strength of the footings: The common rule of 1974 was 1' down for every 3' up and it is a fact that the fence is still standing intact as it was built 34 years ago. If it could support the retaining wall and the fence for all that time, there shouldn't be any doubt that it will continue to support a 36" retaining wall. The new fence will have new posts and post holes, which you are invited at your discretion to measure before we set the posts. Since the fence will be less than 6' high, we will make sure that we make the holes at least 24" – 30" deep.
15. Require a Building Permit: This is exactly what I have been trying to do since last Spring.

These comments as based on my interpretation of Mr. Tarabanovic's communiqué, but I must admit that there were many things that I just don't understand about his statements. I have consulted with the Surveyors, the City Engineers, contractors who specialize in fencing and retaining walls, my attorney and other City Staff members. My efforts are focused on complying with the rulings and making sure that everything is done properly. The only problem I have had is finding the funding to pay for all these things. I believe that I have found a Contractor that is willing to use the labor of some of my friends that have volunteered to help me to reduce the cost. Now I just have to have your approval of my plan and your guidelines on what I must and must not do. Weather permitting, we should be able to meet your 120 day time limit.

Thank you again for your patience.

Dorothe Cox
734 Liverpool Way
Sunnyvale, CA 94087