



**CITY OF SUNNYVALE
REPORT
Planning Commission**

February 25, 2008

SUBJECT: **2007-0975:** Application located at 149 West Arques Avenue (near Stowell Ave.) in an R-0 (Low Density Residential) Zoning District.

Motion Appeal of a decision by the Director of Community Development denying a Miscellaneous Plan Permit to allow a five-foot six-inch fence in the required front yard.

REPORT IN BRIEF

Existing Site Conditions Single-family residence

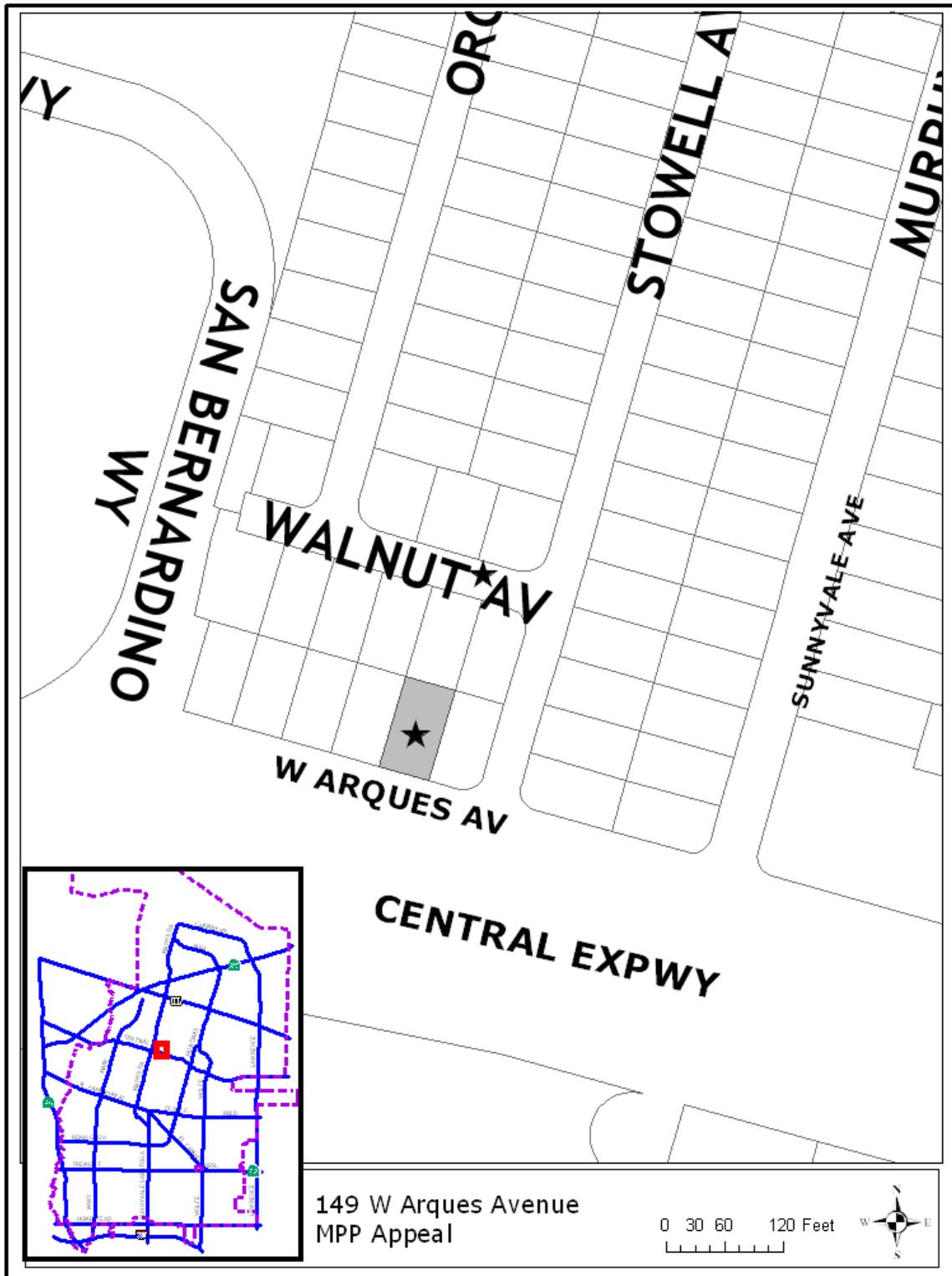
Surrounding Land Uses

- North Single family residence
- South Central Expressway
- East Single family residence
- 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.

Staff Recommendation Deny the appeal and uphold the decision of the Director of Community Development denying the Miscellaneous Plan Permit



PROJECT DATA TABLE

	EXISTING	PROPOSED	REQUIRED/ PERMITTED
General Plan	Residential Low Density	Same	Residential Low Density
Zoning District	R-0	Same	R-0
Lot Size (s.f.)	5,021 sq. ft.	Same	6,000 min.
Lot Coverage (%)	26.7%	Same	40% max.
Floor Area Ratio (FAR)	26.7%	Same	45% max. without PC review
Gross Floor Area (sq. ft.)	1,344 sq. ft.	Same	2,259 max.
Fence Height	N/A	5'6"	3 ft. max. within required front yard
Parking			
Total spaces	2	Same	4 min.
Covered spaces	1	Same	2 min.

★ Starred items indicate deviations from Sunnyvale Municipal Code requirements.

ANALYSIS**Description of Proposed Project**

The subject application was triggered by a complaint to the Neighborhood Preservation Division, in which a 5'6" tall solid wood fence was constructed in the required front yard without appropriate permits. A Miscellaneous Plan Permit (MPP) is required for all fences up to six-feet tall in the required front yard of residential properties. In response to the complaint, the applicant submitted an application for a MPP to request approval for the existing fence.

Staff had concerns regarding the height and appearance of the newly constructed fence, the driveway gate design (portion of the fence that runs in front of the driveway), and portions of the existing fence located within the required front yard area. Therefore, staff denied the MPP application. The applicant has since appealed the decision to the Planning Commission.

Background

On September 7, 2007, the property owner applied for a Miscellaneous Plan Permit for a 5'6" tall wood fence located in the required front yard of a single-family residence. Planning Division staff visited the site and found the following issues with the fence:

- The newly constructed fence along the east property line was 5'6" tall within the required 20-foot front yard setback.
- A portion of the 3' tall picket fence along the front property line blocked the entrance to the driveway.
- The existing fence along the west property line (stepped fence) was 5'6" tall within the required 20-foot front yard setback.
- A portion of the existing fence along the west property line was within the driveway vision triangle (see Attachment D, Site Photos).

No permit record was found for the existing fences on the subject property. Sunnyvale Municipal Code Section 19.48.020 requires permits for all fences within the required front yard area, regardless of height. Planning staff contacted the property owners and suggested they reduce the height of the fence along the left and right side of the property to be no more than 3 feet tall to resolve height concerns. Staff suggested that the wooden planks behind the fence along the side property lines be removed to enhance the overall appearance of the fence. Staff also advised the property owners to modify the driveway gate to be electronic in order to avoid vehicles queuing in the public right-of-way.

The applicant decided that the suggested changes to modify the height and location of the fence were unacceptable. Therefore, staff denied the MPP application on November 5, 2007 (Attachment E, MPP Decision Letter).

During a recent site visit, staff noticed that a 6' tall chain link fence had been constructed along a portion of the front property line. The applicant stated that the chain link fence was 'temporary' in nature. Staff informed the applicant that the chain link fence would be included in the scope of the project reviewed at this hearing.

Previous Actions on the Site: No previous planning permits were found for the subject property.

Environmental Review

A Class 1 Categorical Exemption relieves this project from California Environmental Quality Act provisions and City Guidelines. Class 1 Categorical Exemptions include minor alterations to existing facilities.

Miscellaneous Plan Permit

Use: The applicant is requesting approval for a 5’6” tall fence in the required front yard of the subject property. The applicant has stated that the intent of the fence is privacy and security. The applicant owns two large dogs and contends that a taller fence is required to keep the dogs on the property.

Site Layout: The existing fence runs along the front and side property lines, and is located within the first 20 feet of the property (required front yard setback). A portion of this fence blocks the entrance to the existing driveway leading into the subject property. This fence encloses the front yard and driveway areas, and connects to the existing 6-foot tall side yard fences. In addition, a small portion of the existing 3’6” tall fence along the west property line is within the driveway vision triangle. The applicant proposes to maintain the fence at its current location (Attachment C, Site and Architectural Plans).

Fence Design: The subject property is located within a single family residential neighborhood which contains a mixture of fence types, including wood, brick and concrete fences. The existing fence has been designed as a wooden fence. Since the fence within the required front yard area was built over time, different portions of the fence appear different due to the type and quality of wood used, color of paint and nature of construction.

Most homes in the immediate vicinity of the subject property do not have a fence along the front property line, although fences within the required front yard along side property lines are common. The existing neighborhood also contains fences that are more than 3 feet in height. However, these existing fences may have been approved or built under prior code requirements or built without permits.

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

Single Family Home Design Techniques	Comments
<i>3.11 (G) Fencing along the front property lines and along side property lines within front yard setback areas should not exceed three feet in height.</i>	The applicant is proposing a 5-foot 6-inch tall fence in the front yard area. Therefore, the proposed project is inconsistent with this guideline.

In addition, the applicant has recently constructed (without permits) a new 6’ tall chain link fence along a portion of the front property line. The applicant states that the chain link fence is ‘temporary’. Staff has concerns about the height, material and overall appearance of the chain link fence. Sunnyvale Municipal Code Section 19.48.020 (b) prohibits the construction of fences

composed of barbed wire or other similar material on residentially zoned properties. Sunnyvale Single Family Design Guidelines Section 3.11(G) encourages open wood fencing along front property lines and the use of solid wood fencing with open lattice work segments for fences along side property lines; chain link fencing is strongly discouraged. The applicant must remove the chain link fence regardless of the outcome at the Planning Commission hearing.

Driveway Gate and Circulation: The existing driveway gate runs along the front property line and is an extension of the existing fence. The gate encloses the uncovered parking space on the driveway and includes a manual latch. The driveway is currently used to park a medium-sized trailer. The trailer blocks the entrance to the one-car garage, as a result of which, there is no room to park vehicles on the subject property. The portion of Arques Avenue on which the subject property is located is a dead-end street; hence there may not be a traffic issue due to the limited use of the street by residents and guests.

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

Driveway Vision Triangle and Safety: SMC 9.34.060 requires that 10-foot driveway vision triangles be maintained clear of obstructions over 3 feet tall. A driveway vision triangle is defined in SMC 19.12 as "the triangle area created by a line connecting points along the back edge of a public sidewalk and out edge of a driveway, which points are established 10 feet distant from the intersection of the back edge of the sidewalk and the outer edge of the driveway." The intent of this requirement is to promote safety and reduce the potential for accidents and injury by providing drivers a better view of pedestrian, bicycle, and vehicular traffic while backing out from the driveway.

A portion of the 3'6" tall solid wood fence along the west property line is located within the driveway vision triangle. The fence incorporates a stepped design with a height ranging from 3'6" at its lowest point and 5'6" at its highest. The fence is adjacent to two driveways i.e. the driveway on the subject property and the driveway on 155 W. Arques Avenue (Attachment C, Site and Architectural Plans). A Variance is required to allow the 3'6" tall fence in a driveway vision triangle, where 3 feet is the maximum permitted in the Sunnyvale Municipal Code section 19.48.020.

Staff believes that the visibility of vehicles may be obstructed by the existing fence. The limited visibility of vehicles backing out from the driveway poses a safety concern and is inconsistent with the intent of the vision triangle requirement. Staff discussed this issue with the applicant and they have agreed to reduce the height of the fence within driveway vision triangle area along the west property line to be 3' or less. Staff has included a condition requiring the reduction of fence height for the portion of the fence within the driveway vision triangle.

Compliance with Development Standards/Guidelines: The proposed 5-foot 6-inch fence is inconsistent with the Single Family Home Design Techniques which states that front yard fences shall not exceed a height of 3 feet. The existing 3'6" fence does not comply with the required 10-foot driveway vision triangle requirement. Only fences 3 feet or less are allowed in the vision triangle area. Moreover, chain link fences on residential properties are prohibited by the Sunnyvale Municipal Code and therefore, must be removed from the subject property.

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

1. The applicant owns two large dogs and feels that a taller fence would allow for more privacy and serve as a visual barrier between the subject property and the property to the right (301 Stowell Avenue). The neighbor at 301 Stowell Avenue has complained about the dogs.
2. The fence is located in the side yard and there are no driveways along the fence on either side.

Staff Discussion of Appeal: Planning Division staff examined the issues presented by the appellant and notes the following:

The intent of the Single family design guidelines is to enhance the overall feeling of neighborhood by incorporating design features that are common to the neighborhood in general and not to dictate individual homeowner's landscape plans. The guidelines do recognize that home landscaping and fence designs could be as varied and individual as the families that live in them.

Fences up to a height of 6 feet outside the front yard area, i.e. along side and rear property lines, do not require permits from the City. The existing fence on the subject property along the side and rear property lines (outside the front yard area) is approximately 6-foot tall and serves to enhance privacy and acts as a visual barrier between the rear yards of neighboring properties. A 5'6" tall

fence within the required front yard creates a walled-in appearance which is visually unattractive.

There are tall shrubs and hedges along the shared property line between the subject property and 301 Stowell Avenue (Attachment E, Site Photos). Staff finds that a 3-foot tall fence at this location designed to match the fence along the front property line, in conjunction with the mature landscaping, would significantly enhance the overall visual appearance of the subject property while meeting the applicant's desire for privacy.

In addition, staff has concerns about the driveway gate that runs along the front property line blocking the entrance to the driveway. It has been the City's practice to require driveway gates to be electronic to ensure that driveways can be effectively used as parking spaces and to avoid vehicles queuing in the public right-of-way.

Staff believes that front yards contribute to the overall aesthetic character of a neighborhood; rear yards are intended primarily for private use and as a result, need more screening and taller fences for privacy. In light of the above issues, staff recommends the following:

- The portion of the gate blocking the entrance to the driveway should be removed or redesigned to be mechanically operated.
- The portion of the fence along the east property line within the required 20 foot front setback should be reduced to a height of 3 feet or less.
- The portion of the fence along the west property line within the required 20 foot front setback should be reduced to a height of 3 feet or less.
- The portion of the 3'6" tall fence within the driveway vision triangle area along the west property line must be reduced to 3 feet or less.
- The portion of the fence within the required front yard setback i.e. along the front and side property lines must be painted a uniform color and the wooden slats at the back of the fence (along the side property lines) must be removed to improve its overall appearance.

The fence along the east property line is 5'6" tall and does not have any driveways on either side. Nevertheless, this portion of the fence does not meet the intent of the Single family Design Guidelines in terms of its height and appearance.

The fence along the west property line incorporates a stepped design (3'6" to 5'6") and is adjacent to two driveways i.e. the driveway on the subject property and the driveway on 155 W. Arques Avenue (Attachment C, Site and

Architectural Plans). A small portion of this 3'6" tall fence is located within the driveway vision triangle.

SMC 19.34.060 requires that 10-foot driveway vision triangles be maintained clear of obstruction over 3 feet high. A Variance is required to allow the 3-foot 6-inch tall fence in a driveway vision triangle, where 3 feet is the maximum permitted in the Sunnyvale Municipal Code section 19.48.020. The intent of this requirement is to promote safety and reduce the potential for accidents and injury by providing drivers a better view of pedestrian, bicycle, and vehicular traffic while backing out from the driveway. Staff believes that since the fence along the west property line is a solid 3'6" tall fence, it could potentially reduce the visibility of the driver to pedestrians and other vehicles while backing out of the respective driveways. Staff discussed this issue with the applicant and they have agreed to reduce the height of the fence within driveway vision triangle area along the west property line to be 3' or less.

Regarding the fence along the east property line, although there are no driveway vision triangle issues, staff has concerns about the appearance and height of the fence from an aesthetic standpoint.

Expected Impact on Surroundings: The primary impact on the surrounding neighborhood results from the overall visual impact of the existing fence. The fence within the required front yard area uses a combination of colors, materials and mode of construction and is taller than most front yard fences in the immediate neighborhood. A 5'6" tall fence within the required front yard creates a walled-in appearance which is visually unattractive. Moreover, a new 6-foot tall chain link fence was constructed along a portion of the front property line which significantly reduces the aesthetic quality of the streetscape.

In addition, a small portion of the 3'6" tall fence along the west property line encroaches into the driveway vision triangle. Public safety is the primary concern due to obstruction of the driveway vision triangle. The applicant has agreed to reduce the height of the fence within the driveway vision triangle area to be 3 feet or less.

Fiscal Impact

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

Public Contact

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

Notice of Public Hearing	Staff Report	Agenda
<ul style="list-style-type: none"> • Published in the <i>Sun</i> newspaper • Posted on the site • 6 notices mailed to property owners and residents adjacent to the project site 	<ul style="list-style-type: none"> • Posted on the City of Sunnyvale's Website • Provided at the Reference Section of the City of Sunnyvale's Public Library 	<ul style="list-style-type: none"> • Posted on the City's official notice bulletin board • City of Sunnyvale's Website

Conclusion

Findings and General Plan Goals: Staff is recommending denial for this project because the Findings (Attachment A) were not made. However, if the Commission or City Council is able to make the required findings, staff is recommending the Conditions of Approval (Attachment B).

Conditions of Approval: Conditions of Approval are listed in Attachment B.

Alternatives

1. Deny the appeal and uphold the decision of the Director of Community Development to deny the Miscellaneous Plan Permit.
2. Grant the appeal and approve the Miscellaneous Plan Permit subject to the recommended Conditions of Approval.
3. Grant the appeal and approve the Miscellaneous Plan Permit subject to modified Conditions of Approval.

Recommendation

Staff recommends Alternative 1.

Prepared by:

Surachita Bose
Project Planner

Reviewed by:

Gerri Caruso
Principal Planner

Attachments:

- A. Recommended Findings
- B. Recommended Conditions of Approval
- C. Site and Architectural Plans
- D. Site Photos
- E. Letter from the Applicant
- F. MPP decision letter
- G. Aerial view of the subject neighborhood

Recommended Findings – Miscellaneous Plan Permit

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

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

Land Use and Transportation Element, Policy N1.1:

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

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

- 2) The permit will ensure that the general appearance of proposed structures, or the uses to be made of the property to which the application refers, will not impair either the orderly development of, or the existing uses being made of, adjacent properties. *[Finding not met].*

Staff believes the subject fence potentially detracts from the appearance of adjacent properties and from the character of the neighborhood as a whole. Different portions of the fence appear different due to the type and quality of wood used, color of paint and nature of construction. The height and design of the fence create a walled-in appearance, which is visually unattractive.

Recommended Conditions of Approval – Miscellaneous Plan Permit

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

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

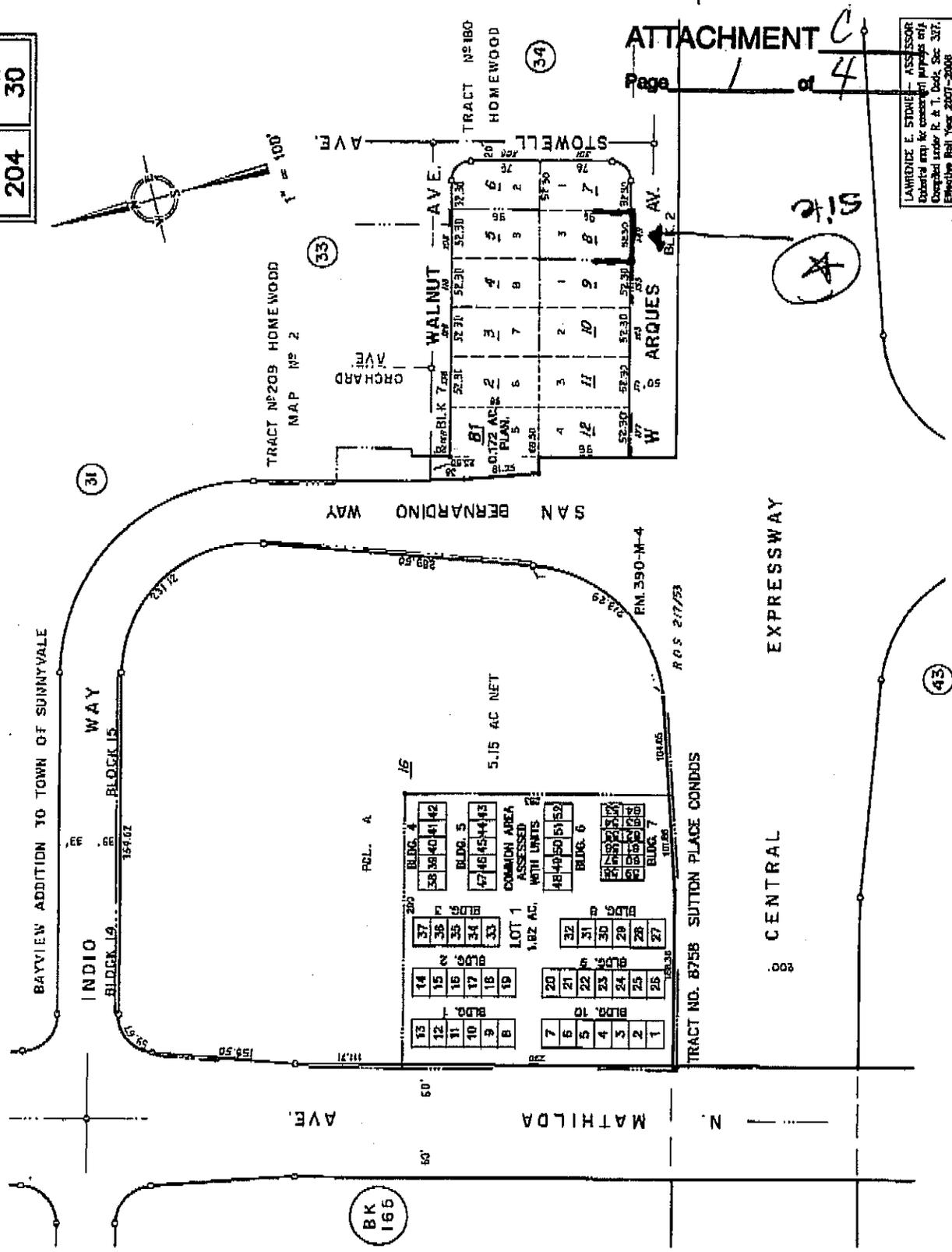
1. GENERAL CONDITIONS

- A. Project shall be in conformance with the plans approved at the public hearing(s). Any major site and architectural plan modifications shall be treated as an amendment of the original approval and shall be subject to approval at a public hearing, except that minor changes to the approved plans may be approved at staff level by the Director of Community Development.
- B. The driveway gate shall be removed completely or modified to be an electronic gate with doors opening either on the property or sliding along the front fence.
- C. The portion of the fence within the required front yard setback i.e. along the front and side property lines must be painted a uniform color and the wooden slats at the back of the fence (along the side property lines) must be removed.
- D. The chain link fence along the front property line must be removed by March 10, 2008.
- E. The fence along the east and west property lines must incorporate a stepped design with the fence not exceeding, a height of 3 feet for the first 10 feet of the required front yard, a height of 5 feet for the remaining 10 feet of the 20-foot required front yard. The applicant shall work with the Director of Community Development to finalize the design of the fence.
- F. The height of the fence within the driveway vision triangle area along the west property line must be reduced to 3' or less.

OFFICE OF COUNTY ASSESSOR — SANTA CLARA COUNTY, CALIFORNIA

BOOK 204
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TRACT NO.	BLDG.	UNIT NO.	BLDG. STATUS
1	17	10	U1
2	18	10	U1
3	19	10	U1
4	20	10	U1
5	21	10	U1
6	22	10	U1
7	23	10	U1
8	24	10	U1
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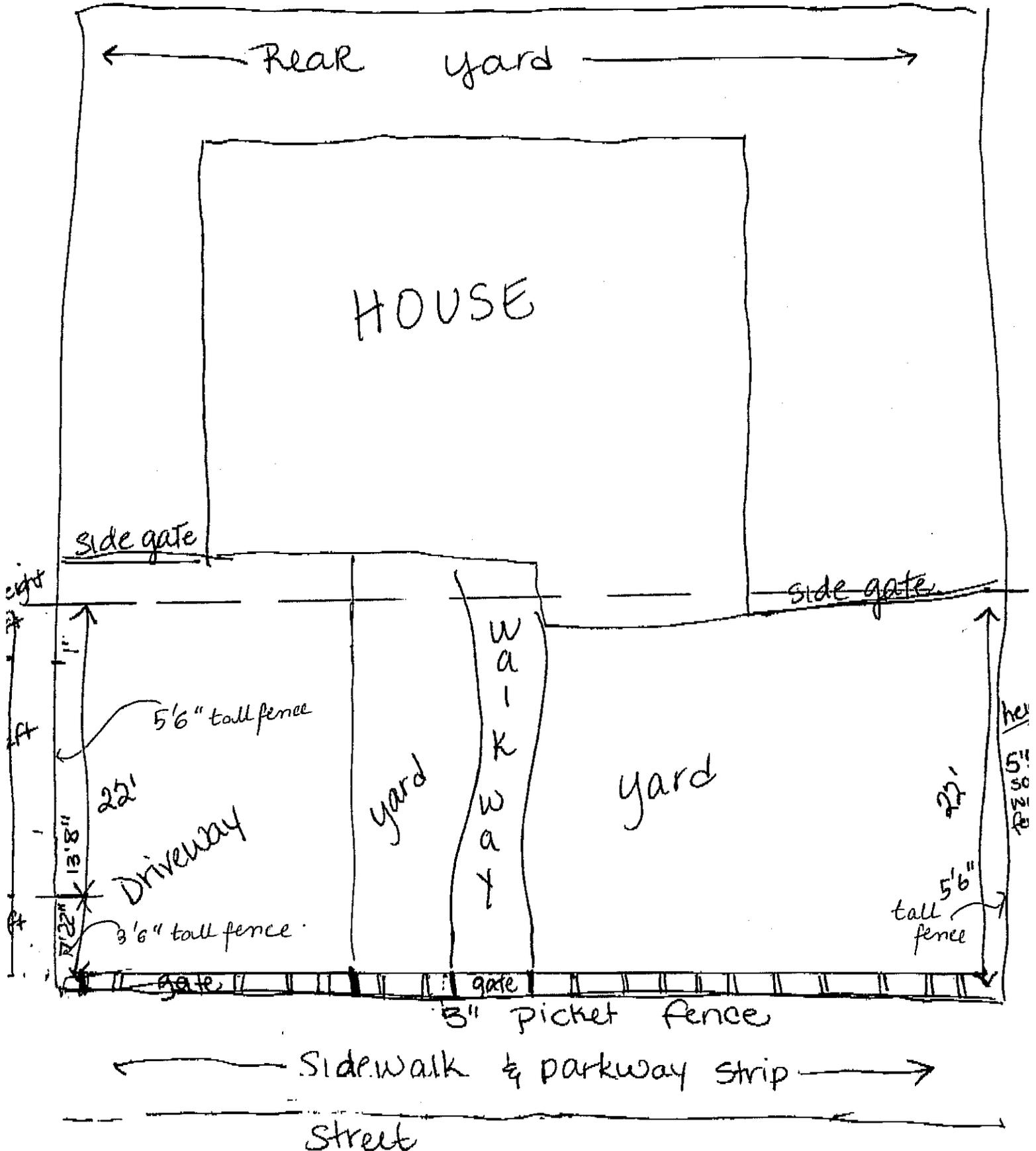


ATTACHMENT C
Page 1 of 4

LAURENCE E. STORIE - ASSESSOR
Qualified and licensed pursuant to
Chapter 630 of the California Code of Regulations
Effective 10/1/2007 to 10/1/2008

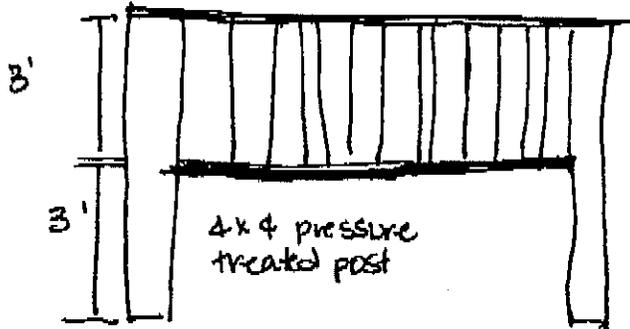
EXISTING SITE PLAN
149 W. Arques Ave

ATTACHMENT C
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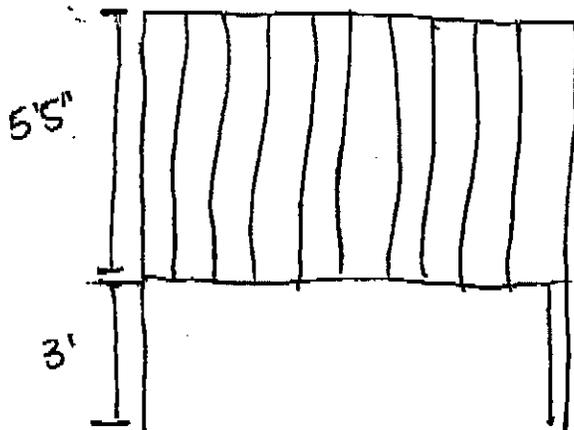


ATTACHMENT C
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Sample Elevation front picket fence



Sample Elevation East Side fence



Boards are next to each other without gaps.

Photographs of fence at 149 W. Arques Avenue



View of 5-foot 6-inch tall fence along the east property line (adjacent to 301 Stowell Avenue)



View of fence along west property line



View of the driveway gate blocking the entrance to the driveway



View of subject property from Arques Avenue showing portion of the fence within the 20-foot required front yard

November 20, 2007

City of Sunnyvale
Community Development Dept
re: File No. 2007-0975

The purpose of this letter is to appeal the decision regarding our fence.

Because we have two large dogs, the 3' fence rule concerns us. We have a Tibetan Mastiff and a Rottweiler. We were trying to be good dog/home-owners by raising the height of our side fences, not realizing that we needed a permit.

Additionally, our neighbor at 301 Stowell (east side) complained about our dogs. We hoped that a higher fence would allow more privacy and a visual barrier when she is in her yard. Since there were 9-10" bushes there we didn't realize the fence would violate any ordinances. Because it is our side yard and our neighbor's sideyard there isn't a driveway ~~at~~ along the fence.

For these reasons, we hope the city of Sunnyvale will make special provisions for higher side fence heights within the first 20' of our property. We'd like to increase the height of our front fence as well.

Would permission from our neighbors help?

We are willing to make the fence more aesthetically pleasing.

Thank you for your consideration.

Sincerely,

Kimberlee Mouna
149 W. Arques Ave
Sunnyvale, Ca 94085
408.730.2714 work
408.472.5017 cell



November 5, 2007

Richard and Kimberlee Molina
149 W. Arques Avenue
Sunnyvale, CA 94086

Subject: Miscellaneous Plan Permit – 149 West Arques Avenue, Sunnyvale,
CA
File No.: 2007-0975

Dear Richard and Kim Molina:

The Department of Community Development has reviewed your application for a Miscellaneous Plan Permit (MPP) for a new fence (built without required permits) along the front and both sides of the property located at 149 West Arques Avenue.

The applicant is requesting approval for the newly constructed 3 ft. high fence along the front property line, a 5'6" high fence along the east property line and a stepped fence along the west property line upto a height of 5'6". All three segments of the newly constructed fence are within the required 20 ft. front yard setback (subject property is in the R-0 Zoning District). In addition, a 3 ft. high gate has been constructed in front of the entrance to the driveway. The applicant has stated that they have two large dogs on the property and need a higher fence for that reason.

According to policy 3.11G of the Sunnyvale Single Family Home Design Techniques adopted in January 13, 2003, fencing along front property lines and along side property lines within front setback areas should not exceed three feet in height. During site visit, staff noticed that most properties in the neighborhood have fences along the rear and side property lines. Most front property line fences are less than 3 ft. high.

Due to the above reasons, the MPP application for the newly constructed fence is being denied. **The required changes to the existing fence must be completed prior to November 26, 2007 (three weeks from the date of this decision letter), unless the decision is appealed prior to the appeal deadline.** If the changes are not completed by that date, it may be necessary to proceed with code enforcement actions.



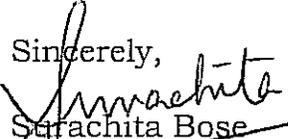
- The portion of the gate blocking the entrance to the driveway must be removed.
- The portion of the fence along the east property line within the required 20 ft. front setback must be reduced to a height of 3 ft or less.
- The portion of the fence along the west property line within the required 20 ft. front setback must be reduced to a height of 3 ft or less.

Staff's decision may be appealed within ten days of the date of the decision. The deadline for appeal is 5:00 p.m. on November 20, 2007. The appeal must be accompanied with a letter outlining the key issues and an appeal fee of \$117.00.

I am looking forward to resolving this issue with you. If you have any questions regarding this permit or would like to discuss design alternatives, please contact me at (408) 730-7443.

Thank you for your cooperation.

Sincerely,


Srachita Bose
Associate Planner

149 Arques Avenue neighborhood



SUBJECT PROPERTY AT 149 W. ARQUES AVE .