Agenda Item #____

CITY OF SUNNYVALE
REPORT
Planning Commission

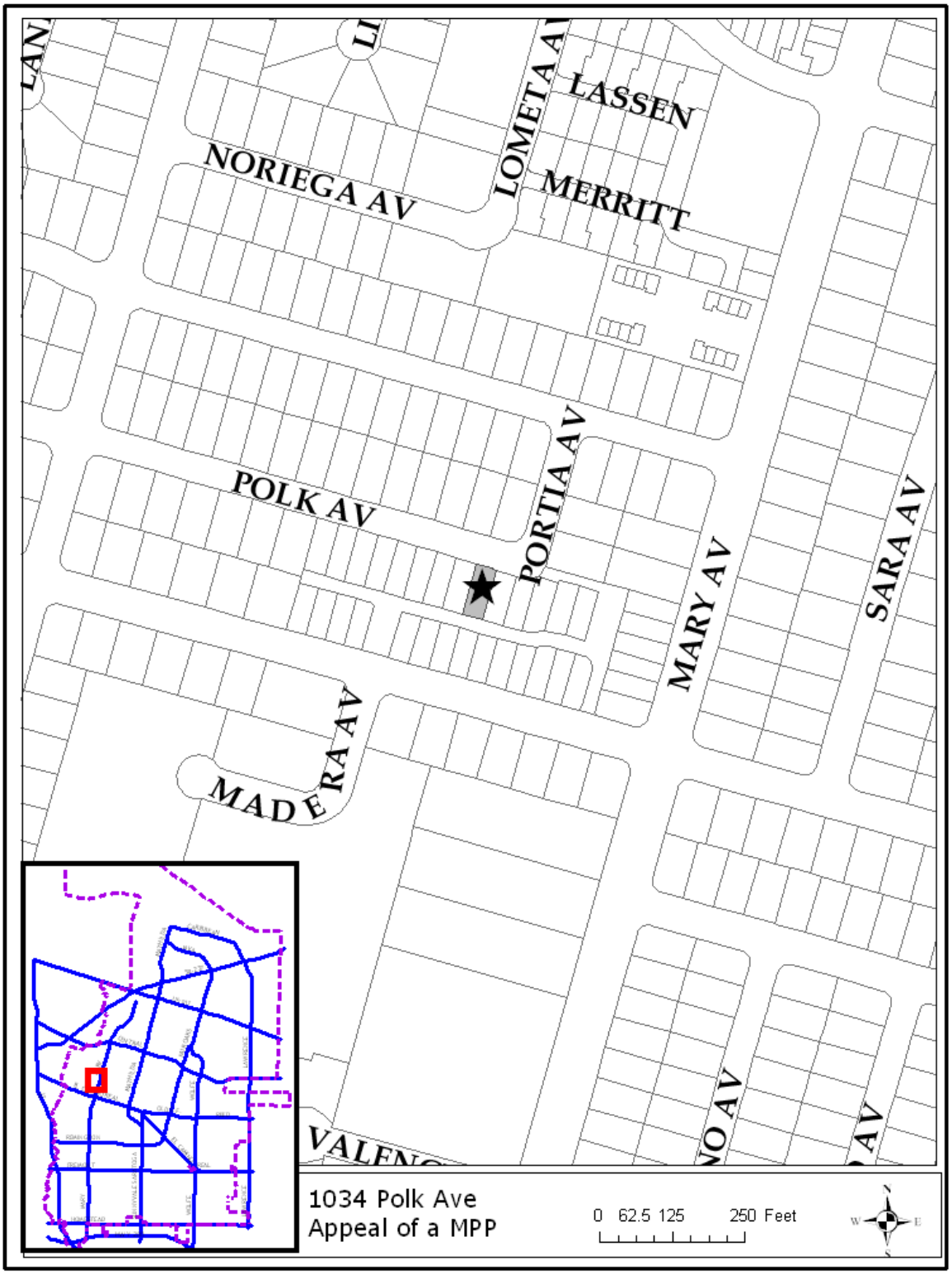
January 12, 2009

SUBJECT: **2008-0839**: Application for a project located at **1034 Polk Avenue** (near Portia Avenue) in an R-2/PD (Low-Medium Density Residential/Planned Development) Zoning District. (APN: 161-39-065)

Motion: Appeal of a decision by the Director of Community Development approving a Miscellaneous Plan Permit for a minor modification to the originally approved plans to remove an architectural feature (lattices) from a home in a planned development.

REPORT IN BRIEF

Existing Site Conditions	Single-family home within a planned development
Surrounding Land Uses	
North	Single-family home within a planned development
South	Single-family home within a planned development
East	Single-family home within a planned development
West	Single-family home within a planned development
Issues	Visual impact and aesthetics
Environmental Status	A Class 1 Categorical Exemption relieves this project from California Environmental Quality Act provisions and City Guidelines.
Staff Recommendation	Deny the appeal and uphold the decision of the Director of Community Development to approve the Miscellaneous Plan Permit.


LANI
LI
LOMETA AV
LASSEN
NORIEGA AV
MERRITT
POLK AV
PORTIA AV
MARY AV
SARA AV
MADERA AV
VALENO
1034 Polk Ave
Appeal of a MPP
0 62.5 125 250 Feet

PROJECT DATA TABLE

	EXISTING	PROPOSED	REQUIRED/ PERMITTED
General Plan	Residential Low-Medium Density	Same	Residential Low-Medium Density
Zoning District	R-2/PD	Same	R-2/PD
Lot Size (s.f.)	3,258	Same	3,258 per SDP
No. of Stories	2	Same	2 max.

ANALYSIS

Description of Proposed Project

The applicant is proposing to remove three lattices from the east side elevation of a single-family home within a planned development. The proposed action is considered a minor modification to the architectural plans approved by the City Council for the planned development, and therefore requires a Miscellaneous Plan Permit (MPP) subject to review by the Director of Community Development.

Background

This application is a result of a complaint filed with the Neighborhood Preservation Division in July 2008 for removal of the lattices without proper approval from the City or the homeowners association (HOA) of the planned development. A similar complaint was also filed for 1047 W. Iowa Avenue.

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

File Number	Brief Description	Hearing/Decision	Date
2003-0020	General Plan Amendment from RLO to RLM; Rezone from R-0 to R-2/PD; Special Development Permit (SDP) to allow 34 single-family homes; and Tentative Map for 34 lots and one common lot	City Council / Approved	06/03/2003

The subject home was constructed as part of a 34-unit, single-family residential development in 2004. The lattices were part of the developer's

proposed plans, which were ultimately included in the site and architectural plans approved by the City Council for the development.

Letters of approval from the HOA architectural board were submitted with the MPP applications (see Attachment C). Prior to considering the MPP applications, staff requested a letter of approval from the HOA as a courtesy to the applicants to assure that private covenants, conditions or restrictions (CC&Rs) were considered. Because the modifications are not on commonly owned property, the action to approve the applications was not dependent on an approval letter from the HOA. However, the applicant would still have to obtain the consent of the other members of the HOA to ultimately remove the lattices, if their CC&Rs require as such.

Staff approved the MPP applications for the removal of the lattices at 1034 Polk Avenue and 1047 W. Iowa Avenue on September 18, 2008 (see Attachment F for the MPP decision letter for 1034 Polk Avenue). The decision on MPP application 2008-0839 was appealed by the immediate neighbor to the east on October 3, 2008. The decision to approve MPP application 2008-0847 for 1047 W. Iowa Avenue was not appealed and is final.

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 lattices on the side of the subject property were included by the developer to add detail to the side of the house. The applicant is proposing to remove the lattices due to maintenance issues and to discourage the growth of climbing plants planted by his neighbor, which the applicant believes may cause fire, or mold and/or fungus growth (see Attachment C for the applicant's description of proposed modification). Attachment I contains a photo that shows the subject home with the lattices still in place. Attachment D contains a photo of the subject home with the lattices removed.

Site Layout and Design: The subject home is part of a planned development of single-family homes. The development is bounded on the east by Mary Avenue, on the south by Iowa Avenue and partially bounded on the north by Polk Avenue. The fronts of the homes face the adjoining public street and provide pedestrian access (front entries) to the public street. The garages are out of view from the surrounding public streets as they are located at the rear of each home on a private street between Polk Avenue and W. Iowa Avenue.

A unique design element of the development is the incorporation of an access/maintenance easement along the side of the adjoining lots. This allows the use of an entire side yard area by one homeowner, 10-12 feet wide minimum, rather than sharing half of the yard for each home. As described by a homeowner in the development (see Attachment E), each homeowner uses about a five-foot wide "Yard Easement" (the property of which technically belongs to the immediate neighbor) while at the same time giving up a similar area on the other side of the home which the other immediate neighbor is able to use. The lattices that the applicant is proposing to remove lie within the applicant's property limits, but directly faces the side yard area that the appellant/neighbor has access rights to and uses as his yard.

Because of the unique arrangement of private usable open space of the homes within the planned development, each home contains no windows or any openings on one side of the ground floor. To address the blankness of these walls, the developer proposed lattices and other architectural features/enhancements.

Every home contains some form of lattices on one side elevation. On some homes, these features are readily visible from the public street such as those on a corner property, and those directly adjacent to the entrances to the private street of the development. In most cases, the lattices are screened from public view by a 6-foot tall wooden fence and additional landscaping, and are for the most part primarily visible to the adjacent neighbor.

Compliance with Development Standards/Guidelines: The proposed project does not violate any development standards or design guidelines. The following Guidelines were considered in the analysis of the proposed modification:

Single Family Home Design Techniques	Comments
3.4.P – The use of projecting horizontal molding can break up taller wall surfaces and give the home more of a horizontal composition to reduce its apparent visual height. *3.9.A – Avoid long blank walls on street-facing facades.* *3.9.B – Larger wall areas can be made more visually interesting with the addition of lattices and trellises for climbing vines, decorative metal grill work and projecting moldings and trims.*	The east side elevation from which the lattices will be removed does not directly face the public street. The 6-foot tall wooden fence further screens the lattices and side wall from public view. The lattices were placed on the ground floor elevations to address a plain wall, which is one of the suggestions described in the design guidelines. However, the projecting horizontal molding (see Attachment D for site photos) that wraps around the structure also breaks up the two-story wall.

The key architectural elements that were emphasized in the review of SDP 2003-0020 for the approval of the planned development are the proportions of the buildings, the semi-prominent front porches and variety of front treatments. These treatments include the use of varying materials, window treatments and roof forms. There are nine different façade elevations that exist in the development, which were important in providing a mixture of homes along all street fronts and in adding interest to the streetscape.

Expected Impact on the Surroundings: The removal of the lattices will have a minor visual impact as the affected elevation does not directly face the public street. There is also an existing 6-foot tall fence at both the rear and front of the property that screen the ground floor wall.

Fiscal Impact

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

Public Contact

Staff received two letters and a petition of opposition (representing nine of the 34 homes) regarding this application (see Attachment D). The neighbors contend that the lattices are a feature of every house within the development and are an integral part of the pleasing appearance and atmosphere of the neighborhood. Staff has also been in correspondence with the appellant regarding the application and the public process prior to and after the appeal was filed (see Attachment H).

Notice of Public Hearing	Staff Report	Agenda
• Posted on the site • 43 notices mailed to property owners and residents within the planned development	• Posted on the City of Sunnyvale's Web site • Provided at the Reference Section of the City of Sunnyvale's Public Library	• Posted on the City's official notice bulletin board • Posted on the City of Sunnyvale's Web site

The Director of Community Development may take an action on a Miscellaneous Plan Permit application without public notice or hearing. Because of the interest expressed in the MPP application, staff sent a courtesy notice (about the Director of Community Development decision on the MPP) to the neighbor who subsequently appealed the decision.

Conclusion

Discussion: The lattices were proposed by the developer to address the walls that resulted from the unique site layout of the planned development. These lattices are just one solution in addressing a plain wall. Furthermore, the affected wall is not readily visible from the public street and is screened by a 6-foot tall wooden fence perpendicular to each end of the wall. Staff does not consider the lattices to be a major architectural feature of the neighborhood and considers their removal as having a minor visual impact to the public street. The homes within the planned development are characterized mainly by the architectural detail on the façades, and the variations of each façade.

Findings and General Plan Goals: Staff was able to make the required Findings. Recommended Findings and General Plan Goals are located in Attachment A.

Conditions of Approval: Recommended Conditions of Approval are located in Attachment B.

Alternatives

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

Recommendation

Alternative 1

Prepared by:

Rosemarie Zulueta
Project Planner

Reviewed by:

Gerri Caruso
Principal Planner

Reviewed by:

Trudi Ryan
Planning Officer

Attachments:

A. Recommended Findings
B. Recommended Conditions of Approval
C. Applicant's Description of Proposed Modification and HOA Architectural Committee Approval Letter
D. Site Photos
E. Letters from Other Interested Parties
F. MPP Decision Letter
G. Neighbor/Appellant's Letter of Appeal
H. Correspondence with Neighbor/Appellant
I. Site Photos Submitted by the Neighbor/Appellant

Recommended Findings – Miscellaneous Plan Permit

In order to approve a Miscellaneous Plan Permit, one or more of the following findings must be met.

Goals, policies and action statements that relate to this project are:

Land Use and Transportation Element
Policy C1.1 – Recognize that the City is composed of residential, industrial and commercial neighborhoods, each with its own individual character; and allow change consistent with reinforcing positive neighborhood values.

> *Action Statement C1.1.1 – Prepare and update land use and transportation policies, design guidelines, regulations and engineering specifications to reflect community and neighborhood values.*

Sunnyvale Single Family Home Design Techniques
Second Floors 3.4.P – The use of projecting horizontal molding can break up taller wall surfaces and give the home more of a horizontal composition to reduce its apparent visual height.
Decorative Elements 3.9.A – Avoild long blank walls on street-facing facades.
Decorative Elements 3.9.B – Larger wall areas can be made more visually interesting with the addition of lattices and trellises for climbing vines, decorative metal grill work and projecting moldings and trims.

1. The proposed use attains the objectives and purposes of the General Plan of the City of Sunnyvale as the project. *[Finding met.]*

   Staff believes that the lattices are not a key architectural feature that defines the character of the homes within the neighborhood. The neighborhood is characterized by the proportions and varying facades of each home which provide visual interest and strong streetscape and street presence. The lattices on the subject property are located on a side elevation that does not directly face the public street and does not significantly contribute to the streetscape created by the strong architectural details of the facades.

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

   The affected walls do not directly face the public street, and will therefore have a minimal visual impact. Also, lattices are one of the options in addressing large wall areas as suggested by the City's design guidelines. The subject home has a projecting horizontal molding that wraps around

the side of the home, which is consistent with the design guidelines. The removal of the lattices would not impair the general welfare of the public.

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. This approval is for the removal of the lattices from the side elevation of the subject structure only.

B. The affected area shall be repaired/stuccoed and painted to match the rest of the building so as not to show any remnants (i.e., bolts, holes, crevices, and the like) of the removed architectural features.

C. Comply with all requirements of previously approved Special Development Permit 2003-0020, unless modified herein. Minor modifications to the originally approved plans of Special Development Permit 2003-0020 may be approved by the Director of Community Development. Major modifications may be approved at a public hearing.

Application to Modify Exterior

Legacy @ Sunnyvale Owners Association Architectural Committee

As explained in our CC&R's, exterior improvements or modifications require approval by our Architectural Committee. This is the form we use for applying for such approval. Please describe all changes you propose to make to your Home exterior. Include a scale drawing(s) with top (plan) and side (elevation) views as necessary to clearly establish locations and elevations of any structures. Include dimensions and materials and specify color(s) if appropriate. Your drawing should include existing structures and boundaries where necessary to indicate relative location. To avoid delay of committee action, please include all information the committee will need to make its decision. Attach additional pages if needed. Consult the Architectural Review Standards and Guidelines for more information.

Please deliver 1 **copy** of this completed form along with drawings to

Owner(s): Gary Swierski Phone:

Mailing address: 1034 Polk Ave

Affected address, if different:

Description of proposed modification:

To remove the trellis and/or Lattice work on the side of our home for ease of maintenance and to discourage the growth of climbing plants and/or to also remove ladder fuel in case of a fire. This will also help to prevent mold and/or Fungus growth. The removal also includes the frame.

Approved. E B. [illegible] 8/10/07

Approved [illegible] 8/10/07

Approved [illegible] 8/10/07

Approved [illegible] 8/10/07

Signed: x Gary Swierski Date: 8/9/07

Approved [illegible] 7/1/08

Legacy At Sunnyvale

Home Owners Association
P.O. Box 60533
Sunnyvale, CA. 94088-0533

August 09, 2007

Gary Swierski
1034 Polk Ave.
Sunnyvale, CA. 94086

Dear Member,

The Board of Directors for the Legacy At Sunnyvale Home Owners Association is in receipt of your Architectural Application to remove the three wood trellis & frame which are mounted with screws to the side of your home, the protected residence. We have taken notice that the Architectural Committee members have already signed your Architectural Application.

Other members of the Association have also expressed an interest to remove their trellis and frame for similar reasons. Therefore, The L.A.S. Board of Directors contacted our legal counsel at Little and Saputo (Little and Saputo wrote our governing documents, also known as the CC&R'S) to inquire if there was anything that would preclude the removal of the trellis and frame from your home, the protected residence. The answer from Little and Saputo was that there is nothing in the Legacy Documents that would preclude the trellis and frame removal.

Little and Saputo directed us to the CC&R'S 3.5.12 "Yard Easements". The last sentence states, that " If a dispute should arise between the Owners with respect to the application of this section or any other matters pertaining to a yard easement, the dispute shall be submitted to the Board for resolution and the decision of the Board shall be final".

Removing the screws, trellis and frame from the enclosed redwood fenced in side yard is considered a very minor cosmetic change, and not a structural change. The trellis is barely visible from outside the redwood fence. The Board of Directors feels that the removal of the trellis and frame will have no impact on the association. In fact, we feel that the wall will look better without the trellis and frame. The problem with the trellis from day one, is that it appears to be an invitation for your neighbor to grow vines and climbing plants on your home. We all know that the vines and climbing plants hold moisture against your home and make the paint and stucco deteriorate faster. This vegetation could act as a ladder fuel in the case of a side yard fire and thus cause the fire to travel up the side of your home. The vegetation also attracts ants, spiders, cockroaches, termites and other insects.

As you know, the trellis and frame was an option by the builder, as was the fake stone façade that was installed at the front of some homes, but not all. Members paid extra money to the builder for the options. Windows in the garage doors was another option. Some garage doors have windows and most do not. We do not have rows of condo's built together. We have single family homes that are separated, painted different colors, each with different styles and features.

Your Architectural Application has been approved and signed by the Board of Directors. The Board of Directors requests that the wall be repainted or touched up to look good, after removal of the trellis.

It is unfortunate that your neighbor's J.W. "Bill" Hawkes and Diane Hawkes have no respect for your home and the Legacy At Sunnyvale CC&R'S. That's obviously why the Hawkes continue to grow vines on your property, on your trellis, mounted on your home. We have on file the pictures that show the Hawkes have vines and climbing plants growing approx. nine to ten feet high on the trellis, on your home. We reiterate again that the Hawkes did this without permission from the Association and that is why the Hawkes continue to be fined by the Association. The Hawkes did not receive permission to plant any type of vegetation in the side yard. This was further established at a hearing on November 08, 2007 that Mr. and Mrs. Hawkes refused to attend. Removal of your trellis and frame will solve part of that problem. It's unfortunate that we have members like the Hawkes in our Association.

Very Truly Yours,
The Board of Directors

Rosemarie Zulueta - Fwd: Restoration of Lattice Structures in 1034 Polk Ave, Sunnyvale,Ca

From: Noren Caliva
To: Zulueta, Rosemarie
Date: 8/18/2008 4:34 PM
Subject: Fwd: Restoration of Lattice Structures in 1034 Polk Ave, Sunnyvale,Ca

>>> phil peng <goldonedragon@yahoo.com> 8/18/2008 4:28 PM >>>
Dear Trudi Ryan,

I was totally shock when I found out the three Lattice structures of 1034 Polk Ave were removed and left with ugly white paint during my walk around our community of Legacy of Sunnyvale during mid July. My first reaction was: it could not have happened in one of the most safety city in the country. Vandalism here. IMPOSSIBLE ! UNBELIEVABLE !.

When we bought our house in Legacy of Sunnyvale, we were attracted by its unique architectural design, its beauty and its value. Lattice is one of those special design enhance this community's value. Destroy any one house lattice is destroy our total community value and will damage my house value.

I want house of 1034 Polk ave to be back to its original developer outlook with three lattice structures restored to preserve this community beauty and its value also my house value.

Very truly,

philly peng and lucille liaw
1023 West Iowa Ave, Sunnyvale, Ca

PETITION OF CONCERNED LEGACY AT SUNNYVALE HOMEOWNERS

ATTACHMENT C
Page 3 of 5

RE: Illegal Removal of Lattice Structures/Stucco Frames **August 20, 2008**

We have become aware that two of our fellow homeowners, residing at 1034 Polk Ave. and 1047 W. Iowa Ave., have taken the following actions without our knowledge and consent:

1) On July 4, 2008, these homeowners illegally removed the several lattice structures/stucco frames from their respective side walls.
2) In addition to failing to obtain prior approval from the other Legacy homeowners, these homeowners failed to file the required permit requests with and to receive subsequent approval from the City of Sunnyvale before commencing these architectural alterations.
3) These homeowners have filed after-the-fact permit requests only because the City subsequently notified them of their violation of the City Code (SMC 19.18.030).

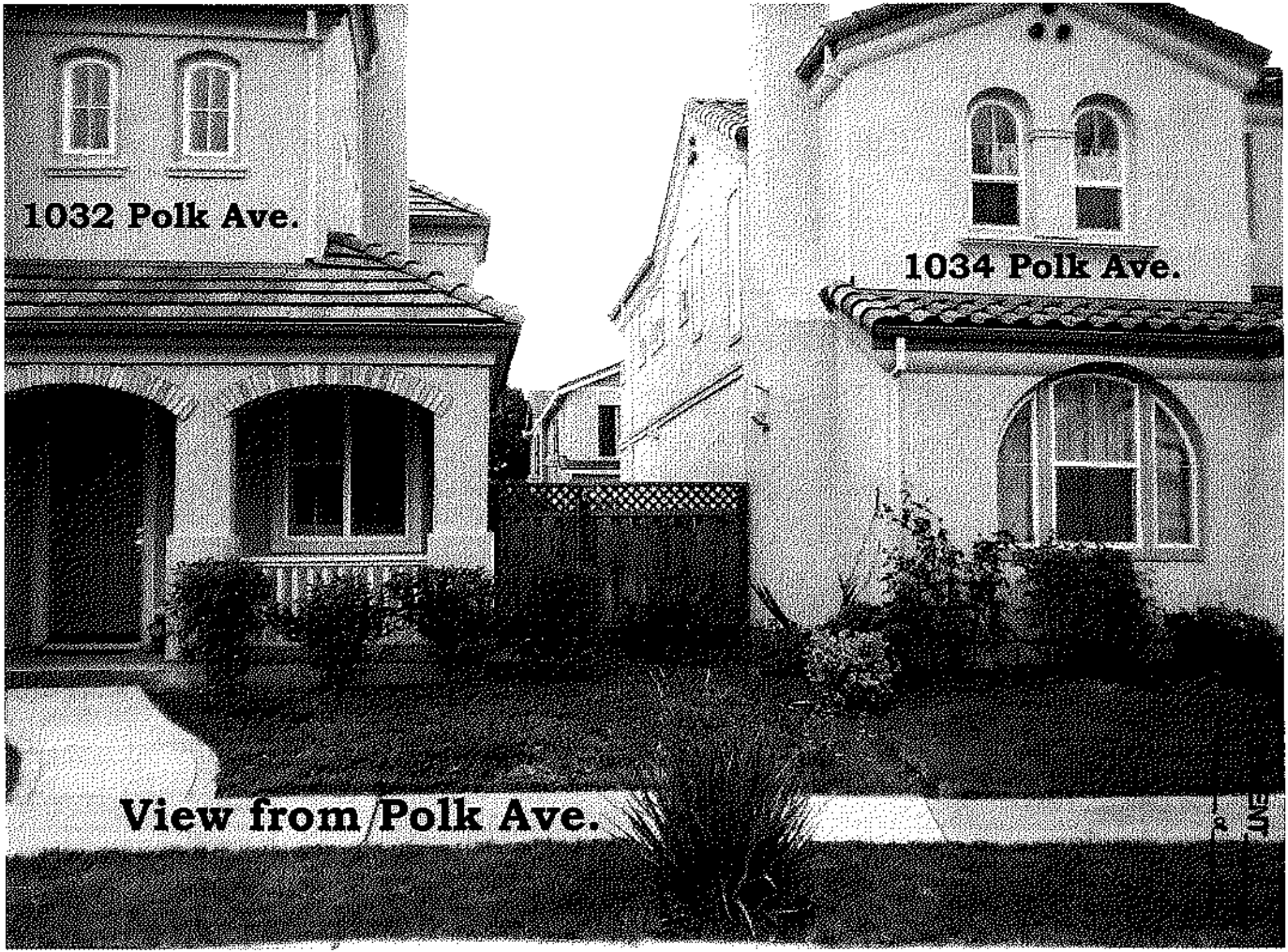
We were not notified in any way by the Legacy Homeowners Association of contemplated architectural alterations, which affect the entire thirty-four-home Legacy neighborhood. If we had received such notification, we would not have given our consent due to the following reasons:

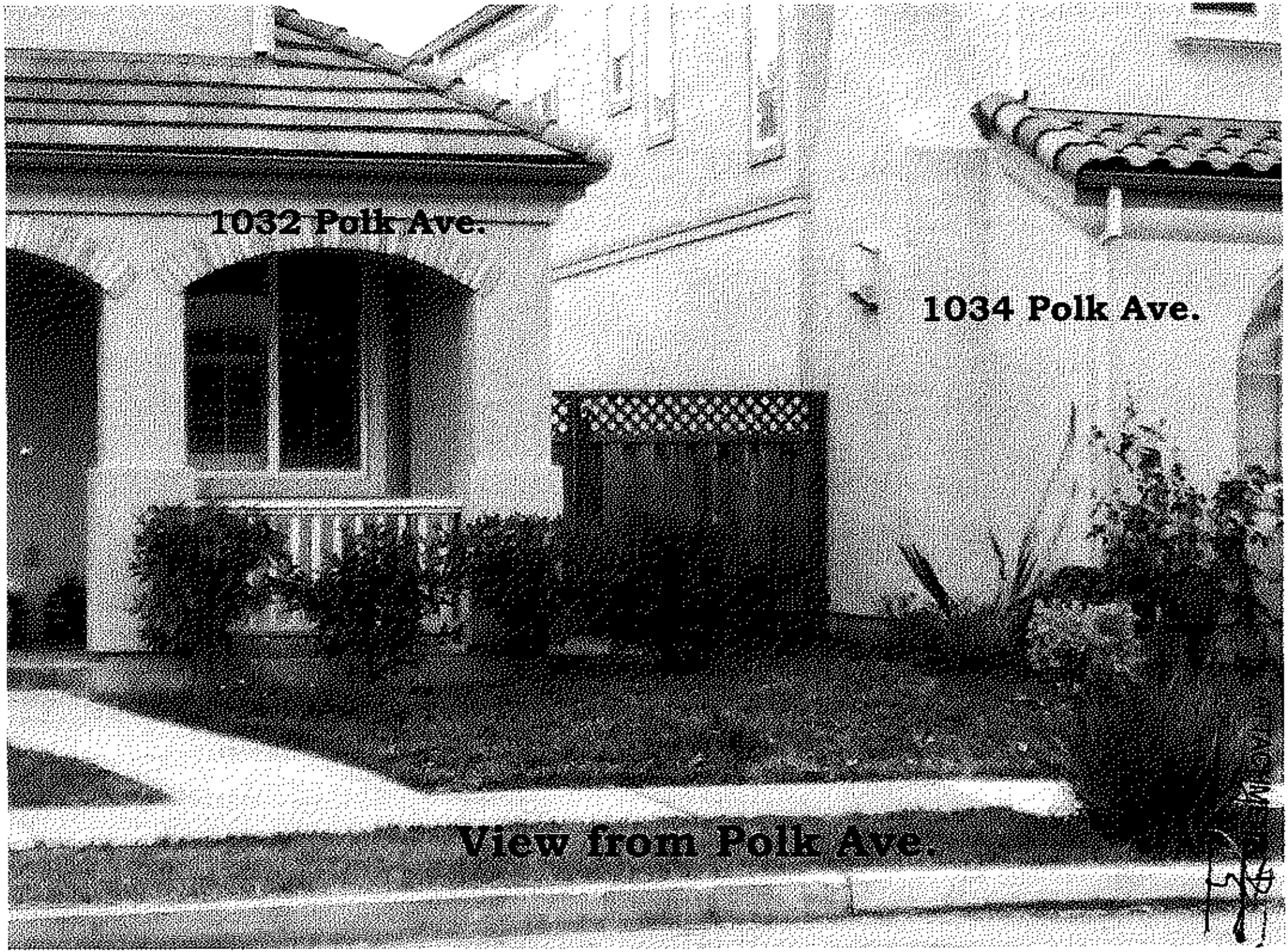
1) We judge the lattice structures/stucco frames, which are a feature of every Legacy house, an integral part of the pleasing appearance and atmosphere of the Legacy at Sunnyvale neighborhood.
2) When we purchased our respective homes, we knew the structures/frames were a design feature distinguishing our community from other developments in the City.
3) We believe removal of the structures/frames will affect our property values adversely and will cause our neighborhood to look less attractive.
4) In fact, our community as a whole would look rather strange if some houses have the structures/frames and others do not. One of the two owners removed the structures/frames from one side of his house but not from the other.
5) The City of Sunnyvale, based on its standards, approved the design for Legacy—including this architectural feature.

WE OPPOSE APPROVAL OF THESE PERMITS. We request the City to act in the following manner:

A) Deny these and any subsequent requests for this particular change to Legacy exteriors, upholding the very same standards used when it approved the design of our neighborhood.
B) Order the two homeowners to restore the structures/frames so that the respective houses are returned to their pre-July 4 condition.
C) Set a reasonable deadline by when the restorations must be completed, at the owner's expense, to the collective satisfaction of the Legacy homeowners and the Planning Department.

Name B. HAWKES	Address 1032 POLK AVE	Signature Bill Hawkes
Name P PENG	Address 1023 W Iowa Ave	Signature [illegible]
Name S. THAN	Address 1036 Polk Ave.	Signature [illegible]
Name W. PETCH	Address 1033 W. Iowa Ave	Signature [illegible]
Name C Chan	Address 1033 W. Iowa Ave	Signature [illegible]
Name R Ellis	Address 1017 W Iowa Ave	Signature [illegible]
Name V. Liyanage	Address 1018 Polk Ave	Signature [illegible]
Name D. Steer	Address 1030 Polk Ave	Signature [illegible]
Name Michele Pierron	Address 1054 Polk Ave	Signature Michele Pierron
Name Sang Y Chun	Address 1036 Polk Ave	Signature [illegible]


1032 Polk Ave.
1034 Polk Ave.
View from Polk Ave.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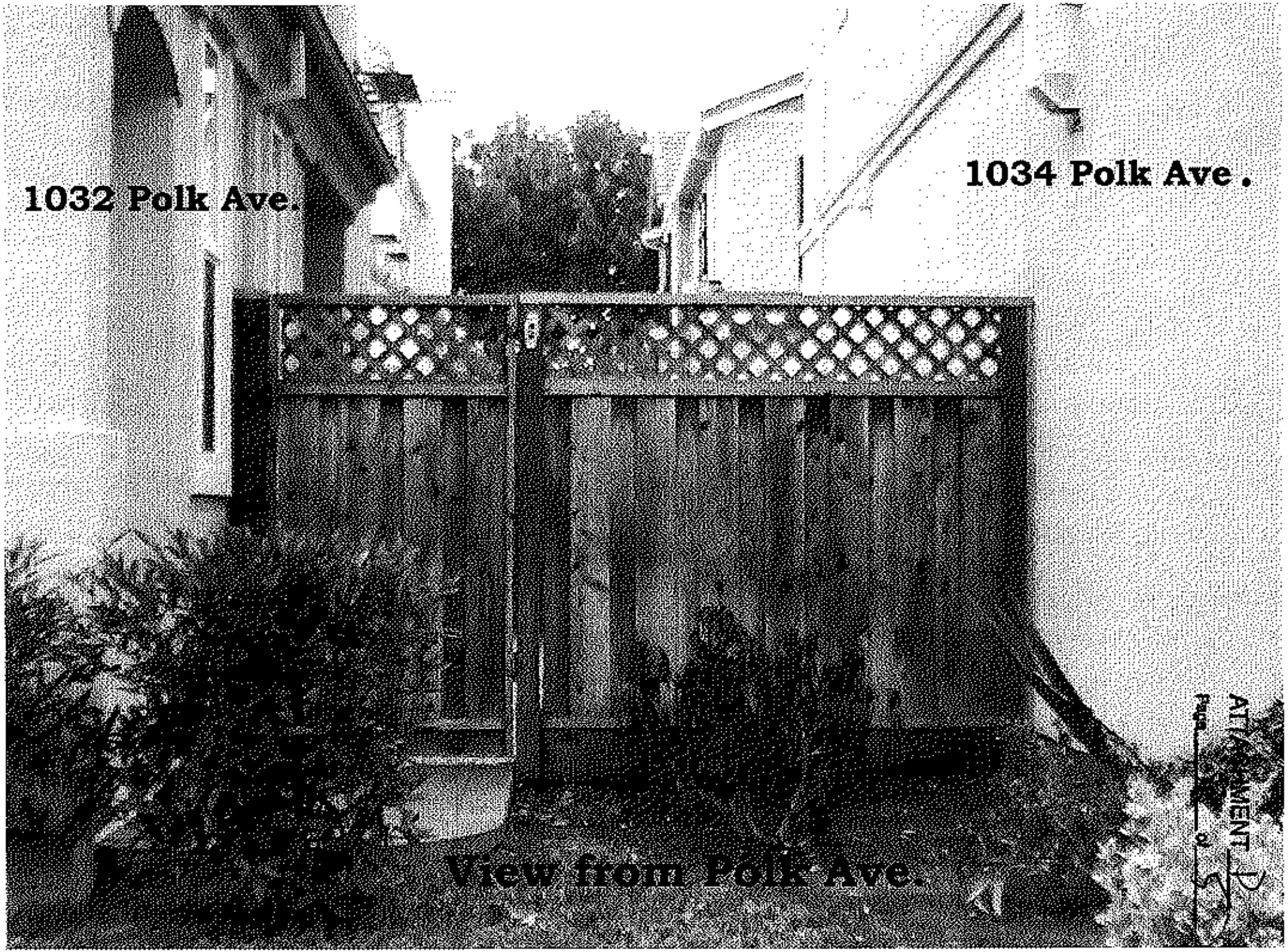
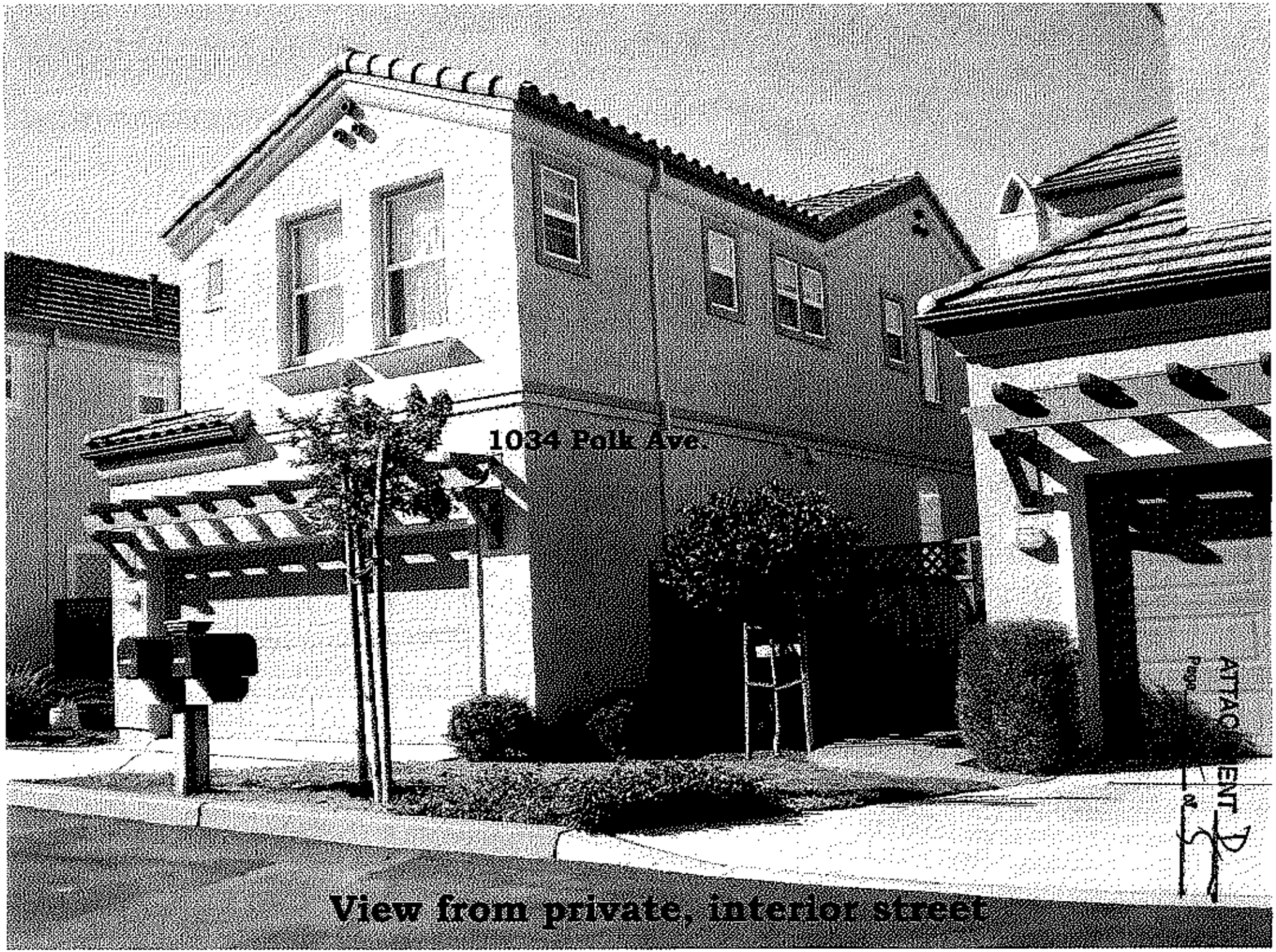
1034 Polk Ave.
View from Polk Ave.

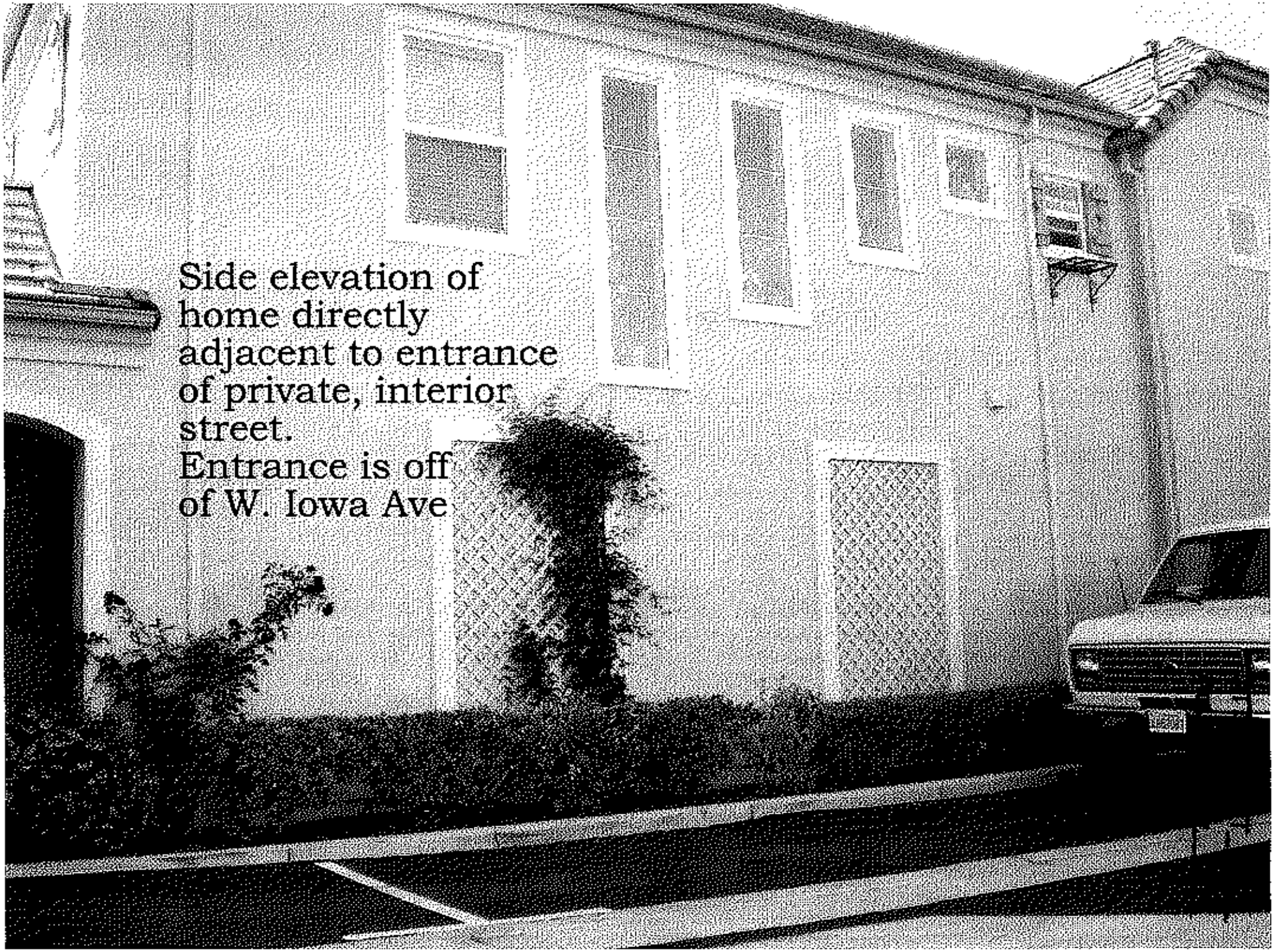


ATTACHMENT D
Page 5 of 5



View from private, interior street

ATTACHMENT D
Page 2 of 5


Side elevation of
home directly
adjacent to entrance
of private, interior
street.
Entrance is off
of W. Iowa Ave

ATTACHMENT 6
Page 1 of 3

Wolfgang Pesch
1033 West Iowa Ave • Sunnyvale, CA 94086

RECEIVED
AUG - 5
PLANNING DIVISION

August 3, 2008

Trudi Ryan
Community Development Department
456 West Olive Ave
P.O. Box 3707
Sunnyvale, CA 94088-3707

Re: "Legacy at Sunnyvale" Development/Architectural Features

Dear Trudi:

My wife and I are property owners in the City of Sunnyvale (we reside at 1033 West Iowa Ave) and we appreciate the City taking a great deal of pride in the health, safety and quality of life for the residential and business communities located in Sunnyvale.

Our property is part of the "Legacy at Sunnyvale" community, a 34-unit common interest development located on Mary/West Iowa Ave. As you might recall the City Council approved the architectural plans for this development back in 2003 (SDP 2003-0020).

With respect to the architectural plans it is my understanding that the City imposed certain Architectural Features upon the developer (Toll Brother, Inc.) as a condition for approval of the project. One of these Architectural Features consisted of several lattice structures/stucco frames that are today present on all Legacy at Sunnyvale homes.

Unfortunately the Legacy community has recently experienced some incidents where Homeowners went overboard and removed these lattice structures/stucco frames from their homes without obtaining the proper approval from the City of Sunnyvale. We are glad to know that Neighborhood Preservation has already been made aware of these incidents and is currently tracking these cases (Case #2008-1723, Case #2008-1727).

By way of explanation the "Legacy at Sunnyvale" development is set up in a way where each Homeowner gets to use a five-foot wide "Yard Easement" area (the property of which technically belongs to your one neighbor) while at the same time giving up a similar area on the other side of the home which your other neighbor gets to use.

With this setup (as spelled out in the Grant Deed) each Homeowner enjoys the use of a 10 ft. wide side yard while looking upon the lattice structures/stucco frames installed on the neighboring home, which soften the look of the otherwise bare walls in this area. Homeowners are also free to landscape the "Yard Easement" area as long as the plantings do not touch the neighbor's residence (see the attached photographs of our side yard).

Community Development Department
August 3, 2008
Re: "Legacy at Sunnyvale" Development/Architectural Features
Page 2 of 2

Our neighbor, Mr. Edward Guen (residing at 1035 West Iowa) is the Owner of the home that contains the lattice structures/stucco frames that we look upon from our side yard. Mr. Guen has recently put us on notice that he intends to remove the lattice structures/ stucco frames from his Legacy at Sunnyvale home as installed by the developer.

I believe you can understand that both my wife and I are now extremely concerned that we will suffer a substantial diminution in the enjoyment, use, and property value of our home should the City approve the Miscellaneous Plan Permit (MPP) Mr. Guen intends to file with the City when applying for the removal of these structures from his home.

We feel that the lattice structures/stucco frames are an integral part of the Legacy at Sunnyvale community and we believe the City should uphold the very same standards it applied during the approval process of the development when reviewing a Legacy Homeowner's MPP permit applying for the removal of these Architectural Features.

We would hereby like to inquire with the City's planning division whether the City has any intentions to allow Legacy Homeowners to remove the lattice structures/stucco frames from their homes when a Legacy Homeowner applies with the City of Sunnyvale for the removal of these structures by means of a Miscellaneous Plan Permit (MPP).

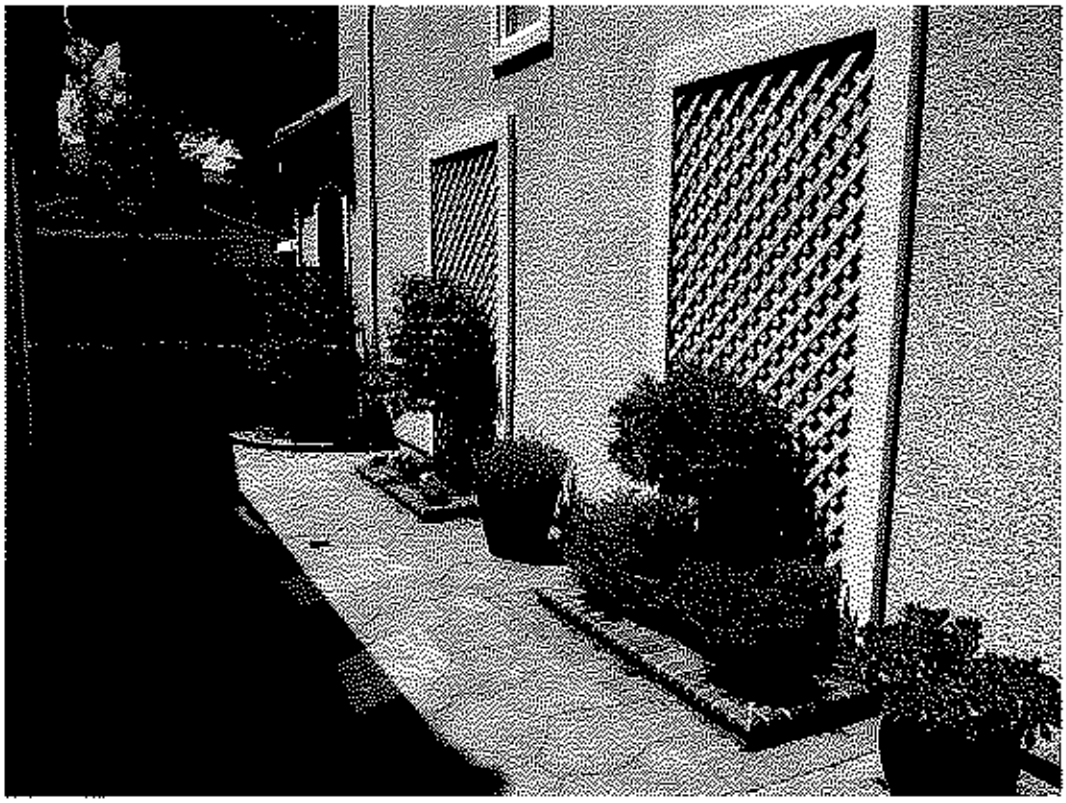
Thank you in advance for your response in this matter. Please do not hesitate to contact us should you have any further questions. You can reach me at 408-931-4230 by cell or at *wolfpesch@sbcglobal.net* by email (preferred).

Sincerely,

Wolfgang Pesch

CC: Hansom Hom, Community Development Department
Gerri Caruso, Community Development Department
Noren Caliva, Community Development Department

1033 West Iowa - Side Yard (View from Iowa Ave)



1033 West Iowa - Side Yard (View From Back Street)

September 18, 2008

Gary Swierski
1034 Polk Ave.
Sunnyvale, CA 94086

Subject: Miscellaneous Plan Permit – 1034 Polk Ave., Sunnyvale, CA 94086
File No.: 2008-0839

Dear Gary Swierski:

The City of Sunnyvale's Planning Division has reviewed your application for a minor modification to the originally approved plans for your planned development. The request to remove an architectural feature (lattices) from the east side elevation of the home located at 1034 Polk Ave. has been approved. Staff has found that the removal of these structures has minimal visual impact to the quality of the project. **The Miscellaneous Plan Permit has been approved subject to the following conditions:**

1. **The affected area shall be repaired/stuccoed and painted to match the rest of the building so as not to show any remnants (i.e., bolts, holes, crevices, etc.) of the removed architectural features.**

This decision is final unless appealed to the Planning Commission within 15 days of the date of this letter. If you have any questions regarding this permit or the appeal process, please contact me at (408) 730-7437 or at rzulueta@ci.sunnyvale.ca.us. Thank you for your cooperation.

Sincerely,

Rosemarie Zulueta
Project Planner

Cc: Legacy at Sunnyvale Homeowners Association, P.O. Box 60533, Sunnyvale, CA 94088
Chris Koelbel, Neighborhood Preservation Specialist, City of Sunnyvale

1 My neighbors and I disagree with the Planning Department's approval of Permit 2008-0839 allowing the removal of the three lattice structures and trellises installed by the builder at 1034 Polk Ave. The lattice structure and trellis combination is one of the architectural design features included in the Special Development Permit (2003-0020) for the Legacy at Sunnyvale neighborhood, a **Common Interest Development**, approved by the City Council in 2003.

2 This design feature covers a wall space with dimensions of approximately 23 feet long by 9 feet in height while the length of the adjacent patio is 42 feet.

3 This allows us to enjoy our view of the side yard and enhances our use of the area by softening the look of the otherwise bare walls.

We request the Planning Commission to:

4 Rescind the approval of Miscellaneous Plan Permit 2008-0839.

5 Direct the Planning Department to deny approval of all past, present and future requests for removal or modification of the Lattice Structure and Trellis design feature installed by the builder on each of the thirty-four houses constituting the Legacy at Sunnyvale neighborhood.

6 Request the Planning Department to demonstrate explicitly through direct quotation of the City Code that it possesses the authority to override subsequently a decision of the City Council without its approval.

7 Request that the Planning Department explain why, since Legacy at Sunnyvale is a Common Interest Development, it did not consult or notify all thirty-four Legacy homeowners during its deliberative process.

8 Order Mr. Swierski to restore the area he altered to its original condition as finished by the builder. Order that the work be performed at Mr. Swierski's expense by a licensed contractor of Mr. Hawkes' choice whose work must be permitted and inspected by the City of Sunnyvale. Establish a reasonable deadline by when the restoration and the resulting bill must be paid

Rosemarie Zulueta - RE: Homeowner Petition-Lattice Structures Legacy at SunnyvaleHOA

From: Rosemarie Zulueta
To: hawkes, bill
Date: 9/18/2008 4:11 PM
Subject: RE: Homeowner Petition-Lattice Structures Legacy at SunnyvaleHOA
CC: Berry, Kathryn; Koelbel, Chris; Ryan, Trudi

Dear Mr. Hawkes,

This is in response to your question regarding the validity of the approval letters from the Legacy at Sunnyvale Homeowners Association. The letters were submitted with Miscellaneous Plan Permit applications 2008-0839 and 2008-0847.

Miscellaneous Plan Permit applications are required to have a property owner's signature. The applications for building modifications were signed by the respective property owners. In common interest developments (e.g. condominiums) a homeowners association (HOA) serves as the property owner of the common areas. However, in a development such as yours, the HOA generally serves in the role of an architectural review board for privately owned parcels. Prior to considering the MPP applications for Legacy at Sunnyvale, staff requested a letter of approval from the HOA. The purpose of the letter was as a courtesy to the applicants to assure that private covenants, conditions or restrictions (CC&Rs) were considered. Staff does not require, in these instances, verification of the veracity of the letter of the HOA. Due to your interest in these applications staff also provided you a courtesy notification.

As a point of clarification, approval of the Miscellaneous Plan Permit merely enables the structures to be removed, but does not require their removal. The property owners and/or HOA may take whatever actions they feel are necessary or appropriate with regard to the applications, including the HOA rescinding the approval or another property owner challenging the action of an HOA.

We understand that there may be disagreement between property owners about the HOA. Issues regarding the operations of the HOA are a private matter and should be resolved between the property owners.

The Miscellaneous Plan Permits have been approved and issued on September 18, 2008. If you are in disagreement with the decision made by staff, you may appeal this decision to the Planning Commission within 15 calendar days of the date of the decision. The appeal period ends on October 3, 2008. If you have any questions or would like to know more information about the appeal process, you may contact me at 408-730-7437 or rzulueta@ci.sunnyvale.ca.us. Thank you.

Rosemarie Zulueta
Project Planner

CC: Trudi Ryan, Planning Officer
Kathryn Berry, Senior Assistant City Attorney
Chris Koelbel, Neighborhood Preservation Specialist

>>> "bill hawkes" 9/15/2008 3:16 PM >>>

Rosemarie

What is the status of these applications?

ATTACHMENT 4
Page 2 of 11

As it is understood that the BOD of Legacy has to approve this. We are all wondering how you are validating the BOD at Legacy since there has been no election since June,2006 and the people claiming to be the board have not been elected.

Regards

Bill Hawkes

From: Noren Caliva [mailto:NCaliva@ci.sunnyvale.ca.us]
Sent: Tuesday, September 02, 2008 3:40 PM
To: flojo1049
Cc: Rosemarie Zulueta
Subject: Re: Homeowner Petition-Lattice Structures Legacy at SunnyvaleHOA

Bill,

Yes, I passed the petition along to Rosemarie Zulueta, who is the project planner for the two pending applications for lattice removal. I have cc'd her on this email, so please direct any questions that you have about these projects to her.

Regards,

Noren Caliva
Assistant Planner
City of Sunnyvale
(408) 730-7637
ncaliva@ci.sunnyvale.ca.us

>>> 8/26/2008 10:08 AM >>>

Noren

Attached is the petition which was delivered to your office on Monday

As you can see the homeowners are against the granting of the permit.

Please advise the status.

ATTACHMENT 11
Page 2 of 11

Thanks

Bill Hawkes

ATTACHMENT 17
Page 4 of 11

Rosemarie Zulueta - RE: Homeowner Petition-Lattice Structures Legacy at SunnyvaleHOA

From: Rosemarie Zulueta
To: flojo1049@yahoo.com
Date: 9/18/2008 5:58 PM
Subject: RE: Homeowner Petition-Lattice Structures Legacy at SunnyvaleHOA
CC: Berry, Kathryn; Caruso, Gerri; Koelbel, Chris; Ryan, Trudi
Attachments: RE: Homeowner Petition-Lattice Structures Legacy at SunnyvaleHOA

Mr. Hawkes,

I received your voice mail message where you indicated that we had not addressed your question in my recent email to you and where you requested a meeting with me and my supervisor to discuss the issue. Unfortunately, I am not available until after September 30. I will be out of the office for several days and have existing commitments to other projects. I hope the following information will resolve your questions.

I have reviewed your message with my supervisors and the Senior Assistant City Attorney. We have answered your question of "how you are validating the BOD at Legancy since there has been no election since June, 2006 and the people claiming to be the board have not been elected." We are not validating the BOD (Board of Directors).

The City requested a letter from the homeowners association (HOA) as a courtesy to the applicants to assure that private covenants, conditions or restrictions (CC&Rs) were considered. It is up to the homeowners to take whatever actions they feel are necessary or appropriate with regards to the applications and the HOA. Had there been no HOA, the City could have taken action on the application because the modification was not requested on commonly owned property. The action to approve the applications was not dependent on a letter from the HOA. We regret if the request for the HOA letter gave the impression that the decision was dependent on HOA approval.

Rosemarie Zulueta
Project Planner

CC: Trudi Ryan, Planning Officer
Gerri Caruso, Principal Planner
Kathryn Berry, Senior Assistant City Attorney
Chris Koelbel, Neighborhood Preservation Specialist

November 21, 2008

Bill Hawkes
1032 Polk Ave.
Sunnyvale, CA 94086

Subject: Appeal of Miscellaneous Plan Permit – 1034 Polk Ave., Sunnyvale, CA 94086
File No.: 2008-0839

Dear Mr. Hawkes,

Below are responses per your email dated October 7, 2008.

1. As of today, no additional Miscellaneous Plan Permit (MPP) applications from the Legacy of Sunnyvale development has been filed with the City. Any new applications received will be put on hold. This does not include Miscellaneous Plan Permit application 2008-0847 (1047 W. Iowa), which was approved prior to your appeal. The decision was not appealed and therefore the decision is final.

2. Staff's authority to approve the minor change proposed by MPP application 2008-0839 resides in the sections of the Sunnyvale Municipal Code (see Attachment A) and in condition of approval #4 of Special Development Permit 2003-0020:

   > *4. Except as modified below, the project shall be in substantial conformance to the approved plans. The Director of Community Development may approve minor changes, major changes may be approved at a public hearing by the City Council.*

   Some conditions of approval imposed on a project specifically state that conditions shall be satisfied prior to certain actions (e.g. a condition that states that a tree protection plan shall be installed prior to issuance of a building permit). There are also conditions that run with the existence of the project. Staff contends that the condition of approval listed above does not only apply to the construction phase of the development. This type of condition is imposed on most, if not all, projects approved by a use permit, special development permit, variance or design permit in the City. Similar conditions are imposed by other cities as well. The approval granted by the decision makers pertains to a specific project as specified in the approved plans, and any future (prior to or after initial construction) modifications

would require subsequent approvals, such as through a Miscellaneous Plan Permit process.

Every individual is entitled to challenge a condition of approval, which is why the appeal process exists.

3. Section 19.82.020 of the code (see Attachment A) requires a MPP for review of design-related proposals. Sunnyvale Municipal Code §19.82.050 *Findings* states:

> (a) The director or planning commission may approve any miscellaneous plan permit, with the exception of a determination of convenience or necessity, upon such conditions, in addition to those expressly provided in other applicable provisions of this code, as it finds desirable in the public interest, upon finding that the permit will <u>either</u>:
>
> (1) Attain the objectives and purposes of the general plan of the city of Sunnyvale; or
>
> (2) 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.

As part of any design review process, the application (MPP 2008-0839) was reviewed for compliance with development standards and the design guidelines described in the Single Family Home Design Techniques. Design "techniques," or guidelines, are not mandatory, but are intended to promote orderly, attractive and harmonious development when appropriate. Staff was able to make the second finding in consideration of the following Single-Family Home Design Techniques:

> 3.4.P. *The use of projecting horizontal molding can break up taller wall surfaces and give the home more of a horizontal composition to reduce its apparent visual height.*
>
> 3.9.A *Avoid long blank walls on street-facing facades.*
>
> 3.9.B. *Larger wall areas can be made more visual interesting with the addition of lattices and trellises for climbing vines, decorative metal grill work and projecting moldings and trims.*

The affected walls do not directly face the public street, and lattices are one of the options in addressing large wall areas. The subject home also has a projecting horizontal molding that wraps around the side of the home, which helps to break up the two-story wall. The proposal to remove the architectural features ("general appearance of proposed structures, or the uses to be made of the property to which the application refers") is not so

significant as to impair the orderly development of, or the existing uses being made of, adjacent properties. In applying these design guidelines to the proposal, staff found that the removal of the architectural features at the subject site would have a minimal visual impact and would not impair the general welfare of the public.

Findings are subject to an appeal process.

4. Staff believes that this issue has been addressed per staff's emails and letter to you dated September 18, 2008.

5. Although public notice is not required when taking a decision on a MPP application, staff had provided to you a copy of the approval letter for MPP 2008-0839 as well as a copy of the approval letter for MPP 2008-0847 as a courtesy. For required findings, please see response item # 3. Staff has provided copies of documents in the project file you had requested upon your visit to the One-Stop Center on November 17, 2008. Please let us know if there are any other documents in the project file you would like a copy of.

6. There is no definition for "minor modification" or "minimal visual impact" in the Sunnyvale Municipal Code. As we have discussed in our meeting on October 2, 2008, these terms are subject to the professional and well-informed judgment of the decision maker(s) or reviewing body when reviewing a proposal. Examples of proposals we most often see and consider minor are: change in an architectural feature, change in location or design of windows of a building or home, change in types of signs (i.e. channel letters to *illuminated* channel letters), or change in approved exterior colors or materials of a project. MPP application 2008-0839 is typical of the types of applications we receive. Minor modifications are significant enough that it should be subject to discretionary review, but small enough so as not to require additional environmental review or review by the Planning Commission or City Council. Projects or proposals that are considered "minor" are typically those exempt from the requirements of California Environmental Quality Act (CEQA). An example of a major modification would be the addition of dwelling units in a development project approved for a certain number of units.

   Minimal visual impact is again subject to the judgment of the decision maker(s) or reviewing body. Please see response item #3 above for an explanation of how staff considered the proposal of MPP application 2008-0839 to have a minimal visual impact.

Please let me know if you have additional questions. The appeal has been scheduled for the Planning Commission public hearing of January 12, 2009 at

8 p.m. The staff report will be available the Friday prior to the date of the hearing. I will be sure to send you a copy once it is finalized. Thank you.

Sincerely,

Rosemarie Zulueta
Project Planner

Attachments:
A. Referenced Sections of the Sunnyvale Municipal Code
B. Email from Bill Hawkes dated October 7, 2008

Please refer to the following sections from the Sunnyvale Municipal Code:

Chapter 19.82. MISCELLANEOUS PLAN PERMIT

19.82.010. Purpose.

A miscellaneous plan permit is an administrative process to allow the determination of the dimensions, colors, materials, architectural elevations, design and placement of the physical characteristics of a project. A miscellaneous plan permit may be used to review the activities noted in this chapter or may be used to review a minor change to a use previously authorized by a use permit, special development permit, variance or design permit. Evaluation shall be in accordance with the regulations of this code and with whatever limitations may be specified by the original permit. The provisions of this chapter identify and prescribe specific procedures and requirements for the filing, processing and consideration of a miscellaneous plan permit. These provisions shall be used in conjunction with the general requirements and procedures identified in Chapter 19.98 including requirements and procedures for applications, fees, notification, appeals, conditions of approval, modifications, expiration, extensions, revocation and infractions. (Ord. 2623-99 § 1 (part): prior zoning code §§ 19.20.300, 19.51.010 (part)).

19.82.020. When required.

(a) General Reviews:

(3) Architectural design features not utilized for occupancy or storage where the floor area ratio exceeds the maximum permitted floor area ratio;

(5) Colors and/or materials (exterior);

(6) Design review of single-family residence;

19.82.040. Decisions.

(a) The director of community development, without notice or hearing, may:

(1) Approve the miscellaneous plan permit as requested or as changed, modified or conditioned by the director, if the director finds that the use or project as approved meets at least one of the required findings.

(2) Deny the miscellaneous plan permit if the director finds that the use or project would not meet either of the required findings.

(b) After receiving an appeal from the decision of the director of community development on a miscellaneous plan permit, and following a public hearing, the planning commission (whose decision is final) by the affirmative vote of a majority of its voting members may:

(1) Approve the miscellaneous plan permit as requested or as changed, modified or conditioned by the commission, if the commission finds that the use or project as approved meets at least one of the required findings; or

(2) Deny the miscellaneous plan permit if the planning commission finds that the use or project would not meet either of the required findings.

19.82.050. Findings.

(a) The director or planning commission may approve any miscellaneous plan permit, with the exception of a determination of convenience or necessity, upon such conditions, in addition to those expressly provided in other applicable provisions of this code, as it finds desirable in the public interest, upon finding that the permit will either:

(1) Attain the objectives and purposes of the general plan of the city of Sunnyvale; or

(2) 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.

Chapter 19.98. GENERAL PROCEDURES

19.98.040. Notice requirements.

(a) For design review, miscellaneous plan permits and tree removal permits, the director of community development may take an action without public notice or hearing.

19.98.090. Conditions of approval.

(a) The director of community development, planning commission or city council may approve any permit, or approve the same upon such conditions in addition to those expressly provided in applicable provisions of this code, as it finds desirable in the public interest.

19.98.100. Revisions or modifications.

Except as otherwise specified in conditions of approval, major changes to an approved project must be reviewed by the original approving authority through the applicable application process. (Ord. 2623-99 § 1 (part)).

Rosemarie Zulueta - Meeting on October 2, 2008- MPP 2008-0839

From: "Bill Hawkes"
To: <GCaruso@ci.sunnyvale.ca.us>
Date: 10/7/2008 10:50 AM
Subject: Meeting on October 2, 2008- MPP 2008-0839
CC: <RZulueta@ci.sunnyvale.ca.us>, <

Gerri

Wolfgang Pesch, my wife and I received a better understanding of the appeals process from our Oct 2. Meeting with Rosemarie Zulueta and you. We appreciate the time that Rosemarie and you spent with us.

However, we would like some points clarified prior to the Appeals meeting with the Planning Commission.

1- I filed an appeal on October 3, 2008. My understanding is that any further MPP applications of this type are put on hold until the results of our appeal are known. Please confirm this.
2- You agreed to research the basis for the Planning Departments authority to override a decision of the City Council. We discussed item no. 4 of the Special Development Permit 2003-0020, and I stated that it did not give the department such authority. I contend that it only applies to the construction phase of the development and not to a modification sought more than three years later.
3- We do not understand the basis you stated for the Planning Department's decision to grant the permit. You stated, "It was judgment based on aesthetics." Such a specific reason or the basis for such a reason is not stated in Chapter 19.82(Miscellaneous Plan Permit of the City Code) . Please explain.
4- We would like to avoid discussing the illegitimacy of the current five owners who claim to be the Legacy at Sunnyvale Board of Directors (BOD). This would only distract from the purpose of the Appeals meeting. If the City references the illegitimate board or relies on it (i.e. implying legitimacy), we will be forced to respond by raising the illegitimacy issue. In your deliberation please understand the term " Legacy at Sunnyvale HOA" is an association of 34 property owners and the term "BOD" is five elected homeowners. These terms are not interchangeable.
5- Please provide copies of all documents and information used to grant this permit, including but not limited to, the findings which lead to the decision.
6- Please define the terms "minor modification and minimal visual impact" and how they were applied in this case.

We would like to meet with you after your research concerning the above items has been completed, at least 10 days prior to the Planning Commission meeting.
Regards

Bill Hawkes

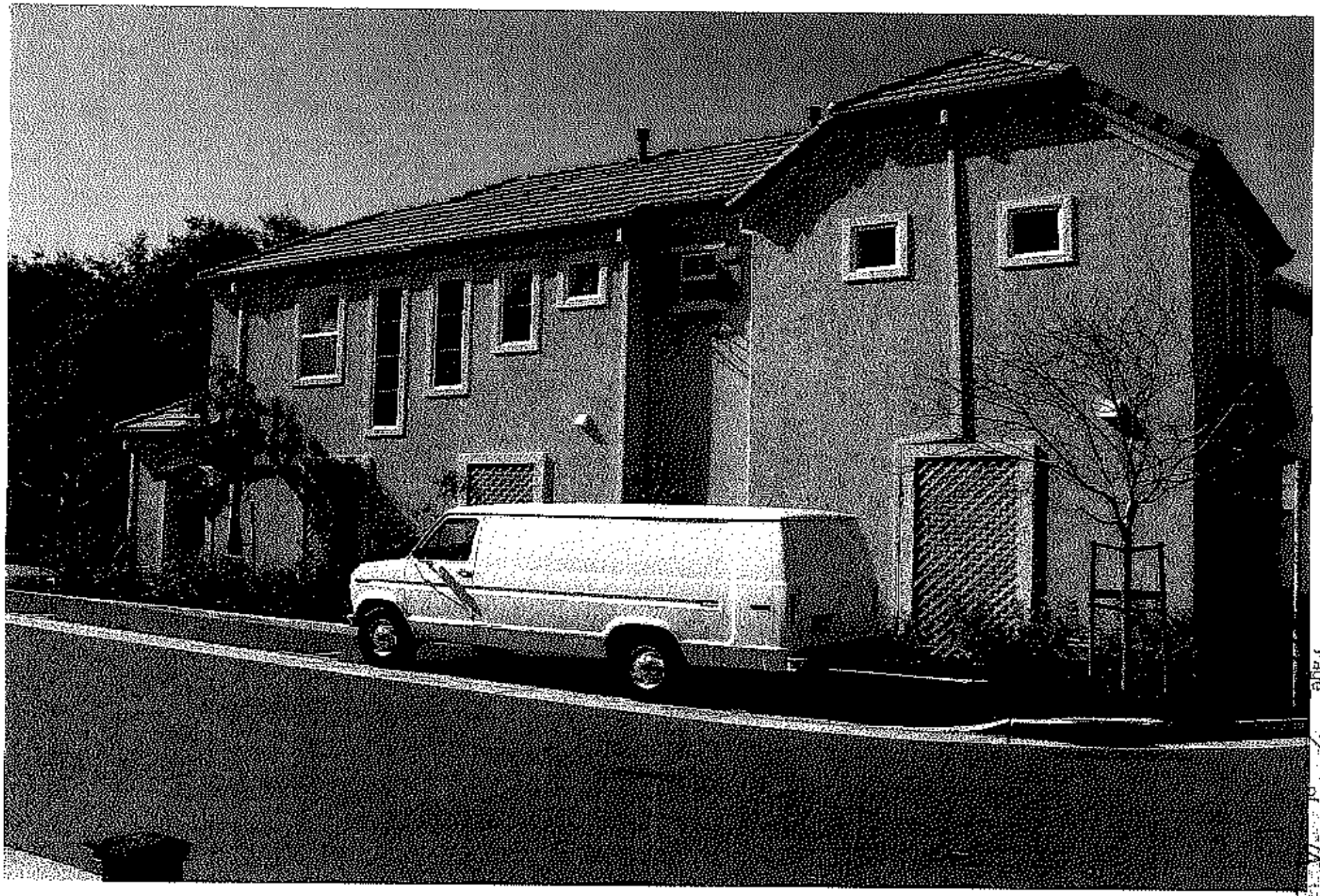
(1) This image looks down the internal street at the center of the Legacy neighborhood. Notice the uniformity of the site layout and the shape and size of the thirty-four houses even though the facades vary. These as well as the landscaping, the side yards, the neutral paint colors, and the trellis structures produce a pleasing neighborhood aesthetic and a calming atmosphere my neighbors and I value.

ATTACHMENT 1
Page 1 of 1

(2) This image shows one of the two ingress/egress points for the Legacy neighborhood. Both border West Iowa Avenue. Notice that the three trellis structures on the wall of the Legacy house in the foreground are quite visible above the fence and also are very visible from the neighborhood on the other side of West Iowa Avenue.

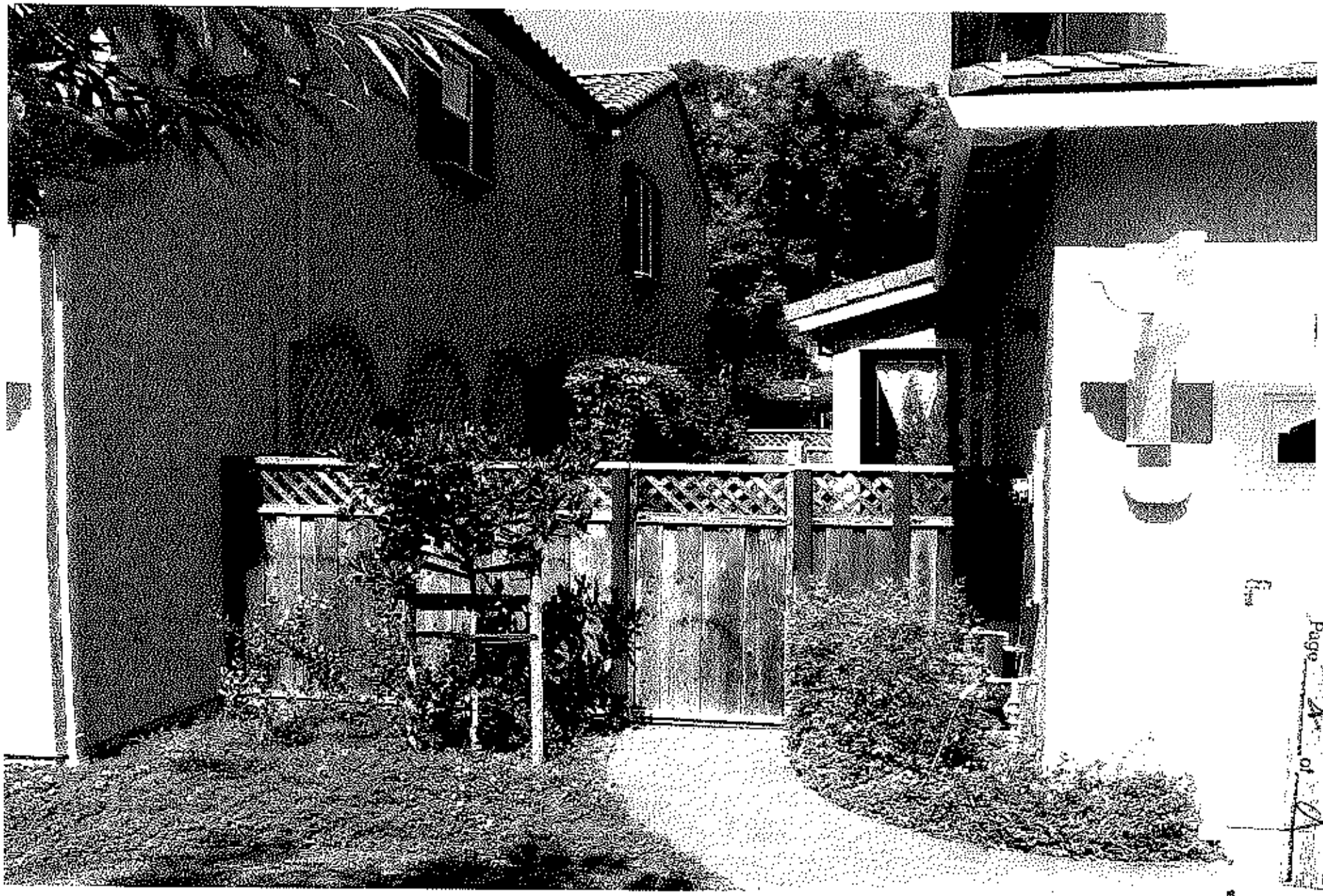
ATTACHMENT 1
Page 2 of 5

(3) This image shows the internal street leading to the second ingress/egress point. The side of the house (an end unit) shows the design strategy of concentrating windows on the second story on one of the two long sides of the house and avoiding windows and doors on the first floor of that side to create, aided by trellis structures but no molding, privacy and the backdrop for the side yard of the adjoining house.



ATTACHMENT 1
Page 3 of 10

(4) This image shows one Legacy homeowner's side yard. Notice that the door from the house exits into the center of the yard, facilitating outdoor entertaining, and notice that the yard has been personalized with an arbor. Observe that the adjoining house does not have projecting molding. The builder chose not to include projecting molding on twenty-three of the thirty-four Legacy houses.



ATTACHMENT 7
Page 4 of 4

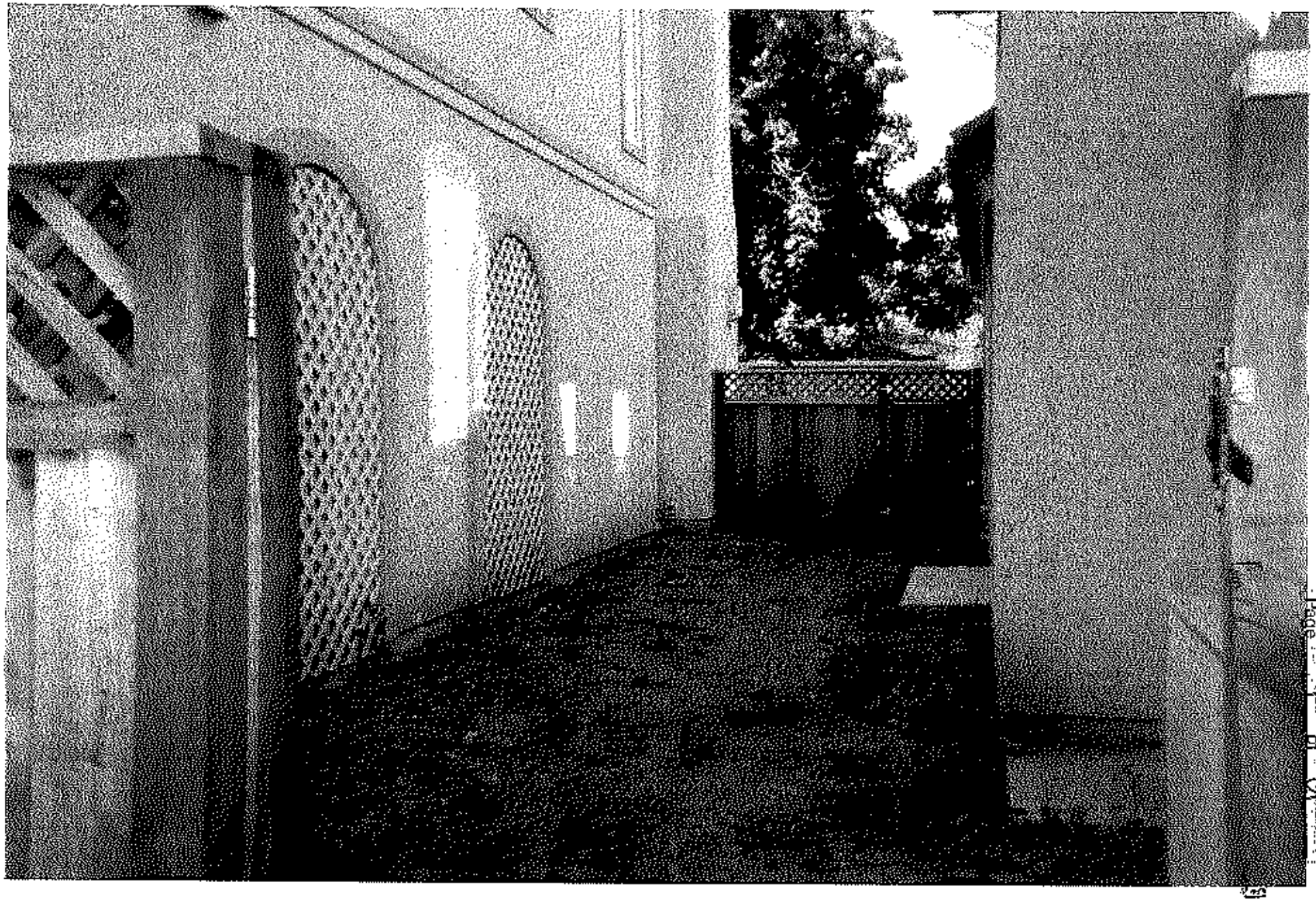
(5) Outdoor Living Central! This image shows another Legacy homeowner's side yard. The owner has crafted a usable, private, personal, and identifiable outdoor room for entertaining against a backdrop of plants and trellis structures. Notice that the adjoining house does not have projecting molding above the four trellis structures.

ATTACHMENT 3

(6) This image shows the rear of 1034 Polk Avenue in the foreground. Notice that the trellis structures on this house and on the one to its left are visible above the fences and also are visible from the internal road in the center of the Legacy neighborhood. The house on the left lacks projective molding.

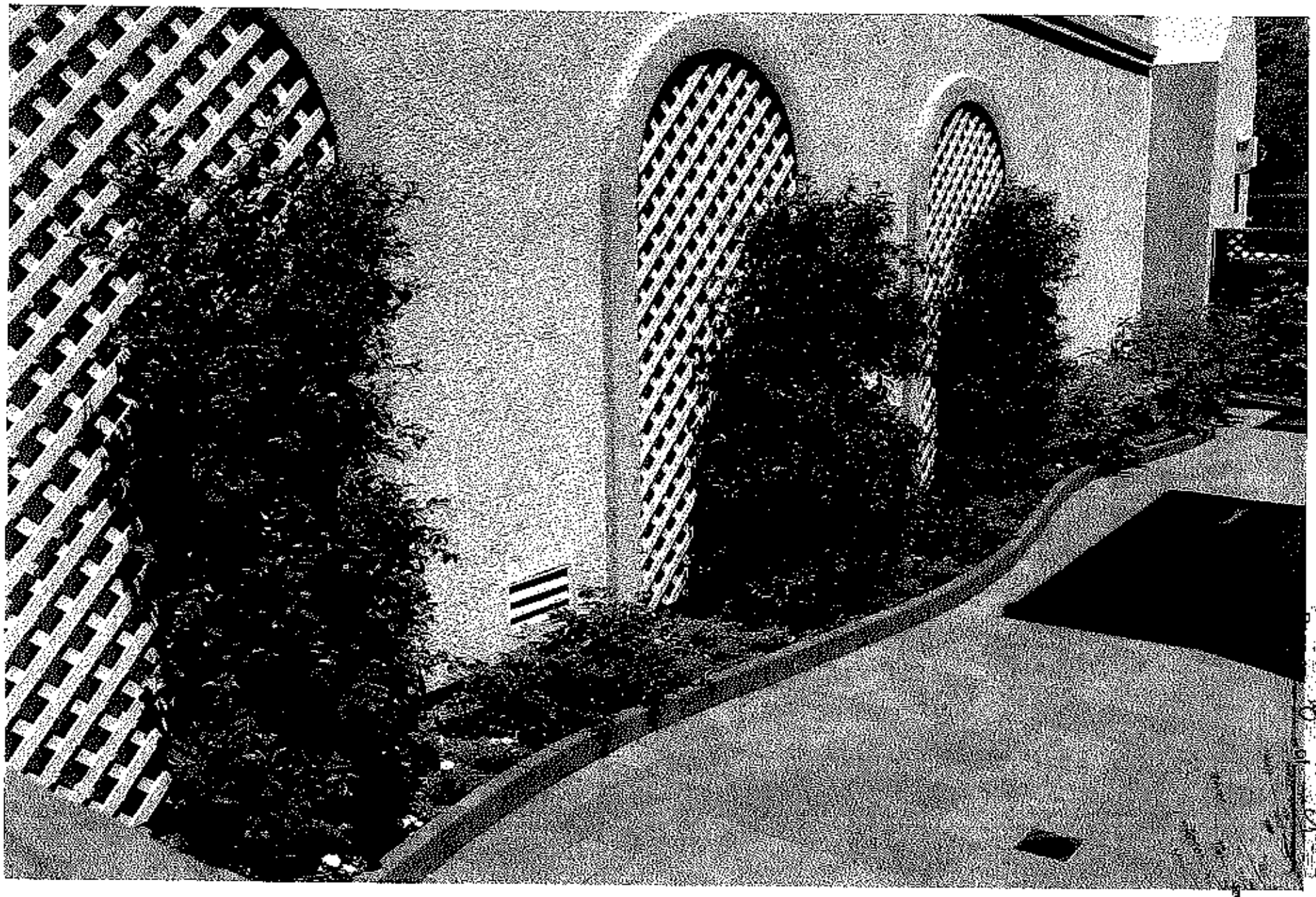
ATTACHMENT 1
Page 6

(7) This image documents my side yard in the state in which the builder left it when I began residence in my house in January, 2005. Notice, on the right, the air conditioner, the wall of my house (perpendicular to the side garage door), the step by the French doors, and the other gate. The installation of my patio and the planting of my garden were completed in October, 2005.



ATTACHMENT 1
Page 1 of 6

(8) This image shows my patio and garden in 2007. My garden contains flowers and free-standing shrubs. My wife enjoys changing the flowers several times a year in relation to the seasons. The lavender plant in the lower right corner was planted in a pot placed in front of the air conditioner. We were inspired by the lattice structures to include taller greenery that reinforced the backdrop concept.



ATTACHMENT 8

(9) My side yard on January 5, 2009. My wife and I see the large bland and empty surface now constituting the long border of our outdoor space from our French door many times a day. We are distressed that this view no longer displays the full realization of our personal aesthetic. We do not find our side yard as pleasing and inviting as it was prior to the lattice structure removal.

ATTACHMENT J
Page 4 of 4