



**CITY OF SUNNYVALE
REPORT
Planning Commission**

June 8, 2009

SUBJECT: **2009-0156:** Application for a property located at **805 Devonshire Way** in an R-0 (Low Density Residential) Zoning District.

Motion Appeal by the applicant of a Miscellaneous Plan Permit to allow a 6'10" wood and concrete fence in the front yard.

REPORT IN BRIEF

Existing Site Conditions Single Family Home

Surrounding Land Uses

North Single Family Home

South Single Family Home

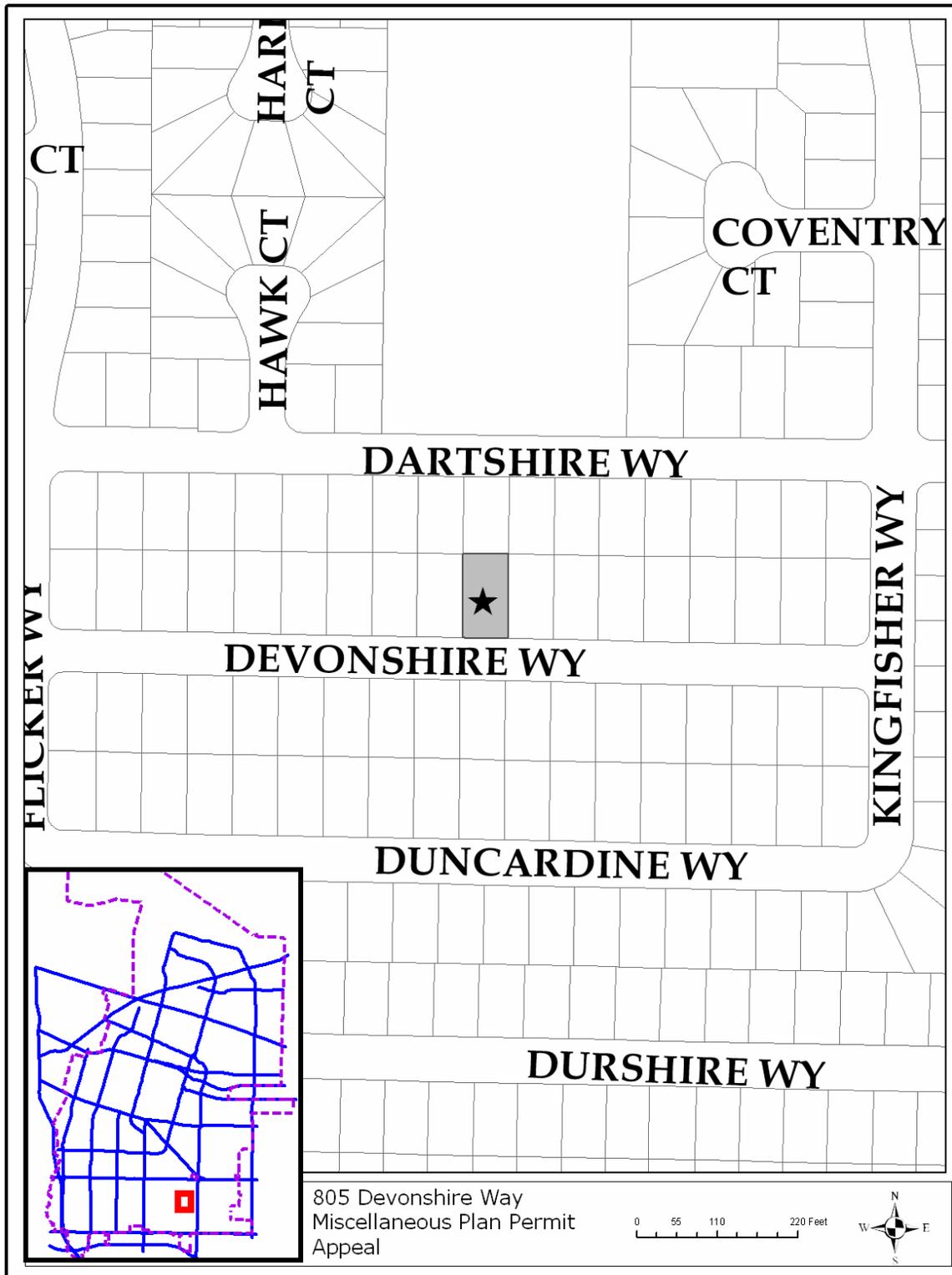
East Single Family Home

West Single Family Home

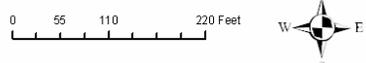
Issues Height, Aesthetics

Environmental Status A Class 3 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 including the Condition of Approval to modify the fence design and/or location.



805 Devonshire Way
Miscellaneous Plan Permit
Appeal



PROJECT DATA TABLE

	EXISTING	PROPOSED	REQUIRED/ PERMITTED
General Plan	Low Density Residential	Same	---
Zoning District	R-0	Same	R-0
Lot Size (s.f.)	6,911	Same	6,000 min.



Starred items indicate deviations from Sunnyvale Municipal Code requirements.

ANALYSIS**Description of Proposed Project**

A Miscellaneous Plan Permit was submitted by the applicant on March 6, 2009 to allow a 6'10" fence in the front yard at 807 Devonshire Way. Prior to approval action, the fence was built according to the proposed plans. On March 23, 2009, the fence was approved with conditions of approval to either relocate the fence so that it does not extend more than 2' beyond the face of the garage (approximately 19' from the front property line) and at a height of 6' from grade; or it shall remain at its current location, at 6' from the front property line, and reduced to 4'6" in height as measure from the top of the nearest public curb (approximately 3'10' above grade). These options are described and illustrated on pages in the approval letter which is included in Attachment D. On April 1, 2009, the permit was appealed by the applicant. A letter has been submitted and is included in Attachment E.

Background

Previous Actions on the Site: There are no previous planning permit applications related to the project.

Environmental Review

A Class 3 Categorical Exemption relieves this project from California Environmental Quality Act provisions and City Guidelines. Class 3 Categorical Exemptions include accessory structures such as fences.

Miscellaneous Plan Permit

Site Layout and Fence Design: The application for a 6'10" fence, which has already been built, is approximately 6' from the front property line and 6' feet away from the driveway (to the left). The fence is also outside the required 10'

driveway vision triangle. A site plan is included in Attachment C. The fence is constructed of wood and concrete. The wood section faces the street (south elevation) while the concrete portion (east elevation) is positioned facing the driveway. A similarly designed fence was approved and constructed within the last two years at 814 Devonshire Way, which is located across the street. This fence was constructed at approximately 11' from the property line.

Compliance with Development Standards/Guidelines: Fences in front yard require approval of a Miscellaneous Plan Permit (MPP) and are subject to review for consistency with the Single-Family Design Techniques. Fences over 3' in height must be located outside the vision triangles. This proposal complies with the vision triangle provisions.

In 2005 the City Council approved, on appeal, a front yard fence (on Sheraton Drive) of 6 feet in height, setback 17' (two feet in front of the garage). At approximately the same time, staff approved a MPP for a fence on Devonshire, across the street from the subject site, allowing a 6' high fence setback 11' from the property line. Front yard fence applications since that time have considered the 2005 Council action; generally the decisions have applied the design principles for height and setback. Neighborhood character has also been considered; therefore, not all front yard fences have exactly the same requirements.

Currently, design guidelines more specific to Eichler homes are being prepared. These are in draft form.

Draft Eichler Design Guidelines - 3.5.4 Integrate fencing with the house style

- *Fences that are 6 feet or more in height are required to be set back a minimum of 15 feet from the front property line.*
- *The design of fences should be simple and modern in appearance. Fences with a strong vertical or horizontal emphasis, as is common in Japanese garden design, is a common approach that fits well with the Eichler Style. These fences should be maintained or replaced, as necessary. In most cases, simple wood fencing, without lattice, is the appropriate design. Concrete block fencing is allowed where it is found in the subdivision.*

Policy on front yard fencing is also noted in the City's Single Family Design Techniques, provided in Attachment A.

The subject fence application is for a taller fence, closer to the public street than the approved fence on Devonshire. There are 36 homes on Devonshire. Of fences that are 6' or greater in height; one fence is located at 10'6", another is 11', and all others are setback a greater distance. Staff recommends that the

fence comply with either the general design principles (as approved for the home on Sheraton) or the design of the other Devonshire fences. Alternatively the fence could be lowered in height to remain at the current location of 6' from the property line. These three options are included in the recommended conditions of approval.

Expected Impact on the Surroundings: The fence, as currently built, could set a precedent of fence layout and design for the surrounding neighborhood and other Eichler neighborhoods throughout the City. In addition to the draft Eichler Design Guidelines which discourage tall fences in close proximity to the street and recommend additional setback, current polices within the Single Family Home Design Techniques recommend that fencing should be kept low and open in character in the front yard. Open wood fencing is a preferred solution along front property lines. The current design creates a walled-in appearance of the property and additional modifications, as conditioned, should improve the overall streetscape of the site.

Appeal: The applicant has submitted a letter of appeal, which can be found in Attachment E. The applicant notes that the current design allows for adequate play area for their children and is consistent with design guidelines of a *Courtyard* Eichler home as described by the applicant. The applicant further notes that according to one recommended option that requires relocation, a mature plum tree would have to be removed. The applicant notes that the design of a previously approved fence at 715 Sheraton is inconsistent with the design intent of an Eichler homes. Also, the option that included a shorter fence would allow direct visibility into the kitchen and family room of the home. The applicant points out that that the design is in compliance with Code requirements and meets the need to provide play area for their children.

Response to Appeal: The recommended options were intended to give flexibility as well as achieve consistency with recently approved fence proposals in the neighborhood and throughout the City. As stated earlier in the report, a similarly design fence at 814 Devonshire Way was built in the front yard. A key difference with that proposal was that a larger setback, approximately 11', was provided. The recommendation is consistent with the approval by City Council in September 2007 for an Eichler property at 715 Sheraton Drive. Similar options were given for that proposal and ultimately a 6' fence was approved with a 2' offset from the wall plane of the garage. Staff notes that the approval options given for this proposal are also more consistent with Eichler Design Guidelines which are to be considered by the Planning Commission later this month and the City Council in July.

The following table summarizes the recent front yard fence proposals on Eichler properties in Sunnyvale as previously referenced:

Project #	Address	Proposed Height (as measured from top of curb) and setback	Staff Approval/ Recommendation	Final Action
2009-0156 (Subject Application)	805 Devonshire Way	6'10" at 6' from property line	Option given to allow the current location with a 4'6" tall fence or the currently proposed height of 6'10" located within 2' of wall plane of garage (19' from property line)	Pending Appeal
2007-0859	814 Devonshire Way	6'5" at 11' from property line	Approved as proposed (11' from property line)	Approval at 11' from property line by Staff through M.P.P.
2007-0125	715 Sheraton Drive	8'6" at 6' from property line	Options were given to allow same location at 4'6" height (solid design), same location 6'6" height (open design), or same height at 20' from property line	Approved at 2' beyond garage (approx. 18') by City Council through appeal

Attachment G includes photos of the subject property and other properties in the neighborhood. The fence located in the front yard at 771 Devonshire Way is approximately 7'6" and positioned 10'6" from the front property line. This fence was approved by a Use Permit and built in 1984. No permits are on record for the fences at 764 and 830 Devonshire Way, as shown in the attachment.

Fiscal Impact

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

Public Contact

Staff has received letters in favor and against the current proposal from nearby residents. These letters have been included in Attachment E.

Notice of Public Hearing	Staff Report	Agenda
<ul style="list-style-type: none"> • Published in the <i>Sun</i> newspaper • Posted on the site • 12 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

Conclusion

Discussion: Staff is recommending denial of the appeal and that the Planning Commission uphold the approval of the decision of the Director of Community Development which requires the fence to either be relocated to within two feet from the wall plane of the garage or reduced in height to a maximum 4'6", as measured from the top of the nearest public curb, at its current location.

Since the appeal, staff has offered an additional option for the Planning Commission to consider, as noted in Condition of Approval #1C. This option would be consistent with the approval of the fence built at 814 Devonshire Way which enables a 6'5" tall fence at 11' setback from the property line.

Findings and General Plan Goals: Staff was able to make the required Findings based on the justifications for the Miscellaneous Plan Permit. 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 including the Condition of Approval to require the fence to either be built two feet beyond the plane of the garage wall or be reduced to four feet, six inches as measured from to curb at the current location, or be built at 11' from the property line (as constructed at 814 Devonshire Way).
2. Grant the appeal and approve the Miscellaneous Plan Permit, as proposed by the applicant, subject to the conditions in Attachment B.
3. Grant the appeal and approve the Miscellaneous Plan Permit with modified conditions.

Recommendation

Alternative 1.

Prepared by:

Ryan M. Kuchenig
Project Planner

Reviewed by:

Steve Lynch
Senior Planner

Reviewed by:

Trudi Ryan
Planning Officer

Attachments:

- A. Recommended Findings
- B. Recommended Conditions of Approval
- C. Site and Architectural Plans
- D. Approval Letter dated March 23, 2009
- E. Appeal Letter from the Applicant dated April 1, 2009
- F. Letters from Other Interested Parties
- G. Site Photos

Recommended Findings – Miscellaneous Plan Permit

Goals and Policies that relate to this project are:

Land Use and Transportation Element – *Policy N.1.4. Preserve and enhance the high quality character of residential neighborhoods.*

City Wide Design Guidelines Landscaping – Fences and Walls – *E4. For front yard fences in residential area, open decorative type fences, such as picket, post and rail are preferred.*

Single Family Home Design Techniques – *3.11 Landscaping. Fencing along front property lines and along side property lines within front yard setback areas should not exceed three feet. Open wood fencing is a preferred solution along front property lines.*

1. The permit will attain the objectives and purposes of the General Plan of the City of Sunnyvale. *[Finding made]*

The proposed fence, as conditioned, meets the objectives and purposes of the General Plan of the City of Sunnyvale. The recommended modifications are consistent with previous City Council action related to front yard fences. A third option has been given, since the appeal, to allow consideration for consistency with the nearby property at 814 Devonshire Way.

2. The permit 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 made]*

As conditioned, the use of a front yard fence is compatible to properties in the neighborhood and would not cause a negative impact to surrounding properties. The modifications to the fence help minimize the walled-in appearance of the property. Existing landscaping should also help soften the view of the fence from the street.

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. Three options are available regarding the setback and height of the fence:
- 1) The fence shall be set back from the front property line so that it does not extend more than 2' beyond the face of the garage (approximately 19' setback required); and the fence shall not exceed 6' in height as measured from the grade (6'10" if measure from top of curb)
 - 2) The fence may remain in its current location, at a 6' setback from the front property line; and the fence shall not exceed 4'6" in height as measured from the top of the nearest adjacent public curb (approximately 3'10" above grade)
 - 3) The fence shall be setback 11' from the property line and not exceed 6'5" as measure from grade, as approved by staff for nearby property at 814 Devonshire Way.



March 23, 2009

Bret Flesner
805 Devonshire Way
Sunnyvale, CA 94087

Subject: Miscellaneous Plan Permit – 805 Devonshire Way, Sunnyvale, CA
File No.: 2009-0156

Dear Mr. Flesner:

The Department of Community Development has reviewed your application for a Miscellaneous Plan Permit to allow a 6-foot 10-inch tall (as measured from top of curb) wood and concrete fence in the required front yard at the above address. **Staff is not able to approve the project as it is currently proposed.** Due to the fence's height and proximity to the sidewalk, staff finds the proposed fence has the potential to create a walled-in appearance in the front yard which is not in compliance with the Single-Family Home Design Techniques.

The Single-Family Home Design Techniques discourage front yard fences exceeding 3 feet in height. In some cases, taller front fences have been approved if significant setbacks from the street are provided and if the fence is found to be compatible with the neighborhood. As you noted in your application, a similarly-styled fence was approved by staff several years ago on a nearby property at 814 Devonshire Way. However, that fence has a much larger setback from the front property line than does your proposed fence. Since that time staff also has received additional guidance on front fences through a decision issued by the City Council on a similar proposal (715 Sheraton, #2007-0125). In that case, the City Council determined the fence should not exceed a height of 6 feet above the property's grade and must be set back so that it extended no more than 2 feet beyond the front wall of the garage.

In order to bring your proposed fence into conformance with design guidelines and the previous City Council decision, the proposal would need to be modified to incorporate an increased setback and reduced height. Staff has **approved the Miscellaneous Plan Permit subject to the following modifications (2 options):**

Option 1

- a) The fence shall be set back from the front property line so that it does not extend more than 2 feet beyond the face of the garage (approximately 19-foot setback required); and

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

- b) The fence shall not exceed 6 feet in height as measured from the grade.

OR

Option 2

- a) The fence may remain in its current location, at a 6-foot setback from the front property line; and
b) The fence shall not exceed 4 feet 6 inches in height as measured from the top of the nearest adjacent public curb (approximately 3 feet 10 inches above grade).

You may appeal the decision to the Planning Commission within fifteen (15) calendar days of the date of the date of this notice. Appeal filings must be submitted in person at the One Stop Permit Center during business hours and must include a completed and signed appeal form, a written letter of appeal, and a \$117 filing fee. If no appeal is submitted within 15 calendar days, this decision by staff will be final.

Staff notes that the proposed fence was constructed between the time of submitting the application and the issuance of this decision; therefore it is currently existing on the property in an unpermitted capacity. The City's Neighborhood Preservation Division will follow up after the decision is final to ensure the required modifications are made to bring the fence into conformance with this approved permit.

If you have any questions regarding this permit, please contact me at (408) 730-7659. Thank you for your cooperation.

Sincerely,



Mariya Hodge
Associate Planner

Enclosures: Approved (Revised) Plans
 Appeal Form

OPTION #1

→ Setback approx. 19' to extend no more than 2' in front of garage wall.

House

Garage

112

← 6 →

← 7 →

← 20 →

max 2'

New Black Fence ← 6 →

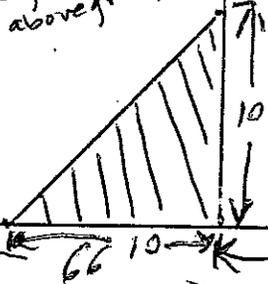
New Wood Fence (Height 6' above grade) ←

approx. 19'

← 6 → ← 6 →

21.5

Approved by the Planning Division
By *M. Wright* Date 3/23/09
FOR Director of Community Development



← 12 →

← 66 → ← 10 → ← 17 →

OPTION #2

→ Height 4'6" above Curb, 3'10" above grade
→ Setback 6'

House

Garage

112

← 6 →

← 7 →

← 20 →

(Height 4'6" above top of curb) → New Black Fence

→ New Wood Fence

← 6 →

← 6 →

← 6 →

← 6 →

← 6 →

Approved by the Planning Division

By *M. H. S.* Date 3/23/05
For Director of Community Development

21.5

←

← 66 →

← 10 →

← 17 →

← 12 →

→

April 1, 2009

Ms. Mariya Hodge
Associate Planner
City of Sunnyvale
P.O. Box 3707
Sunnyvale, CA 94088-3707

RE: Miscellaneous Plan Permit #2009-0156

Dear Ms. Hodge,

Please accept this letter as an official appeal to the Planning Department's recommendations for Miscellaneous Plan Permit # 2009-0156. This permit was submitted for the building of a front fence for a Courtyard Eichler at 805 Devonshire Way.

The plan was submitted with the intent to provide a play area for our young children. Our property has a preexisting swimming pool in the back yard, and the current layout of the courtyard had minimal available open play space. We spent a considerable amount of time researching ways to improve the functionality of the courtyard, which included: web searches, published sources such as "Modern Living," the Eichler Network website, walking through local Eichler open houses, driving through the Eichler neighborhoods and discussion/brainstorming with neighbors. Our research led us in the direction to expand the available play space in the courtyard by adding fencing.

I proceeded with researching the project by obtaining the building code (SMC19.48) and discussing the project with the available planner. We discussed the primary restriction in the building code for front fences over 3 feet high in a driveway vision triangle. Based upon building code and the discussion with the planner I submitted the necessary documents (application, site drawing, picture for elevation drawing and picture of a similar fence constructed in our neighborhood) for the planning permits. Upon submission the plans were reviewed and discussed with the available planner. There appeared to be no concerns with the plans except that there would probably be requirement for some sort of landscaping in front of the proposed fence.

Prior to the final permit approval we were approached by the contractor to begin construction early as there had been some unexpected availability of workers and good weather. I was later called by you, stating that my permit could not be approved as submitted due to additional guidance for front fences on a similar proposal at 715 Sheraton Dr., #2007-0125. Since then I have had additional conversations with you and in person with the available planner, where we discussed proposed options and other alternatives available.

My responses to the Options provided in the letter dated March 23 from you:

Option #1 Move fence to guidance setback 2 feet beyond garage at 6 feet high

- a) This would not allow for additional space for the children in the front courtyard
- b) There would be no visibility of our children in the front yard from either outside in the courtyard or from the house, thus a safety hazard

- c) This would require removal of a mature Plum tree
- d) The design of the fence at 715 Sheraton Dr. is inconsistent to the design intent of an Eichler home and may not be a suitable comparison for a *Courtyard* Eichler home

Option #2 Limit fence height to 3 foot 10 inches from grade

- a) A fence of this height would allow for direct visibility into the kitchen and family room from any person on the sidewalk or cars driving on the street as our house is a *Courtyard* Eichler (the front of the house has one plate glass panel of 6 feet wide by 8 feet high and a 6 feet by 8 feet glass sliding door)
- b) The installation of a short fence would violate all design elements of an Eichler home and in our opinion would dramatically reduce the utility, desirability and value of our home and neighborhood

Option #3 Appeal the decision to the Planning Commission

- a) The submitted fence design is compliance with SMC 19.48
- b) This plan supports our intent to provide a play area for our children, which is part of the courtyard, and would be visible from the large kitchen and family room windows
- c) The plan is consistent to the design intent of a *Courtyard* Eichler Home and adds utility and value to our home and neighborhood
 - Leaves exposed roof beam at entryway
 - Use of concrete masonry for focal wall near driveway
 - Use of vertical slats on front façade of wood fence
 - Simple entry way
 - Incorporates off-setting of front wall
 - Minimizes fortress appearance with the inclusion of a 5 feet by 5 feet set back from neighbor's property line and landscaping
- d) Prior to this project we had discussed with several home owners on our street to survey their opinions; additionally, our neighbor adjacent to the lengthened fence side (795 Devonshire Way) will be incorporating these design themes into their plans as they begin to renovate their front yard

Thank you for consideration of our appeal to Miscellaneous Plan Permit #2009-0156. Your assistance provided through the process has been helpful and we appreciate it. We are very committed to maintaining the integrity of our Eichler Home, its original design and our Eichler neighborhood and hope that we can come to a mutual consensus in this process.

Sincerely,

Bret Flesner & Loree Watanabe
805 Devonshire Way

City of Sunnyvale
Planning Commission

28 Mar 2009

Subject: New Fence at 805 Devonshire Way

Dear Neighbors on the Planning Commission:

This letter is to express my pleasure with remodel my neighbor Bret Flesner is undertaking on the front yard of his house at 805 Devonshire Way. We live directly across from him at 806 Devonshire and have for years had to look out on the overgrown tangle that was that front yard.

Since moving in a couple of years ago, Mr. Flesner has progressively improved the street-side aesthetics of the house. His latest addition – an extended inner patio area enclosed by a handsome front fence – looks very good from the street and is consistent with what others have done in the neighborhood. The added area to his front patio must also increase the usability of the house for his young family.

I must add there have been a number of Eichler remodels in our neighborhood that have completely changed the “Eichler-feel”, but Mr Flesner’s is not one of them.

Sincerely,

Douglas R. Brown
806 Devonshire Way
Sunnyvale, CA 94087

ATTACHMENT F
Page 2 of 3

May 9, 2009
Sunnyvale, CA
Re: file 2009-0156

Ryan Kuchenig, Project Planner
Sunnyvale Planning Commission
rhuchenig@ci.sunnyvale.ca.us

Mr. Kuchenig:

This is regarding the application for a variance to allow a 6'10" fence at 805 Devonshire Way. We reside at 795 Devonshire Way, adjacent to the property with the fence in question. One side of the fence borders our yard, so we have a direct interest in the outcome of this appeal.

We feel that the applicant put a great deal of thought into this fence and went to substantial cost and effort to make sure that it complements the Eichler architectural style and is visually appealing. He faced the fence on both sides and trimmed it with vertical strips of lath to echo the Eichler siding. The indent at the corner gives it interest, and the apricot tree planted in that indent harks back to the apricot trees planted in each front yard when the development was new.

While we agree that horrible things can be done to Eichlers, this is not one of them. It is a lovely fence, aesthetically pleasing, well built and true to the spirit of the Eichler.

Please, don't make them tear it down.

Thank you,
Roger and Barbara Pease

RECEIVED

MAY 19 2009

PLANNING DIVISION

Dear Mr. Kuchenig,

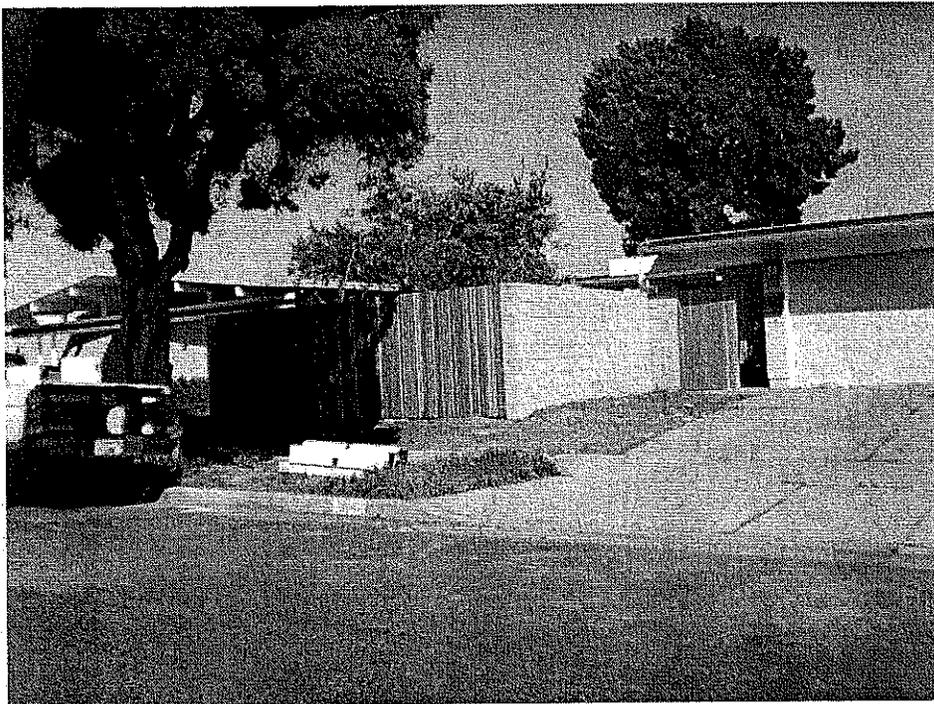
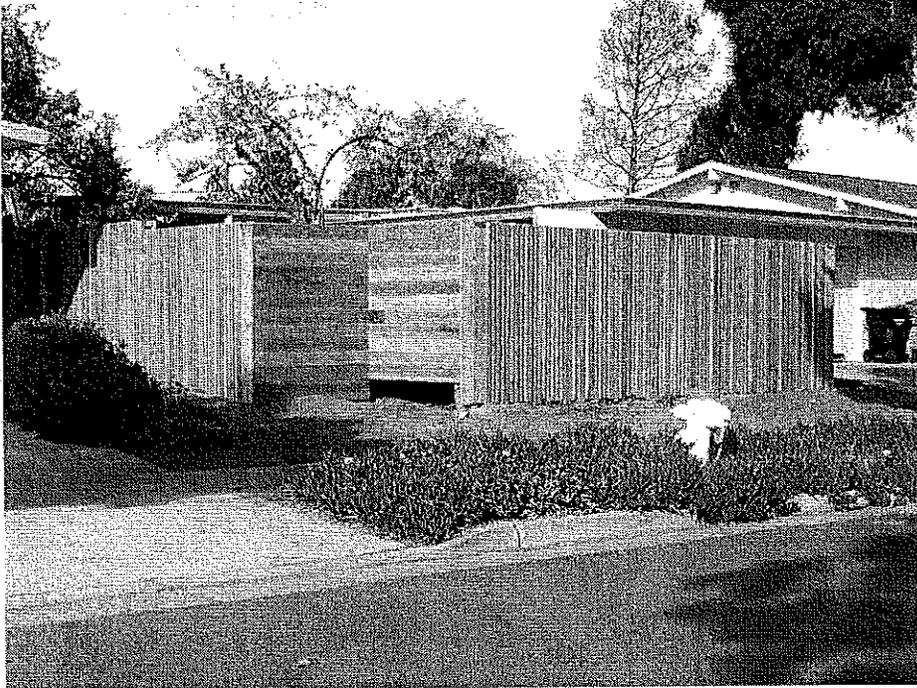
I received a Public Notice from you on May 8th. The subject of the letter was a proposed Miscellaneous Plan Permit to allow a 6' 10" wood and concrete fence in the front yard of 805 Devonshire Way. The notice was a bit late since the fence was constructed almost a month earlier.

I live at 794 Devonshire Way which is almost directly across the street. I would like to voice my objection to this construction. The property originally had a concrete block fence which was the same distance from the street as the garage. This was removed and the wood fence was built so that there is no front yard left at all.

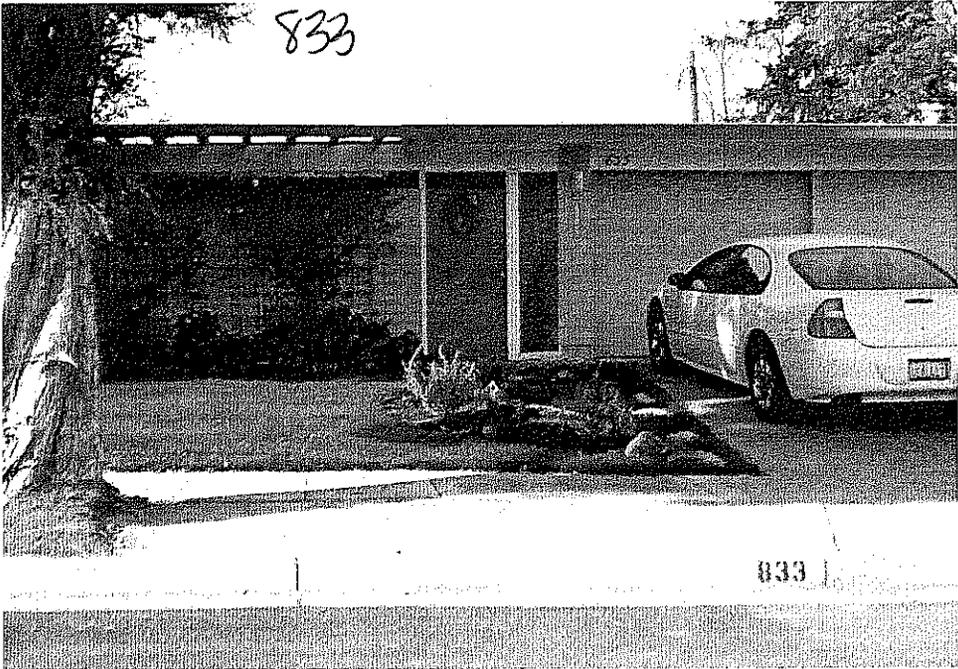
In my opinion it is very unattractive and presents a rather cluttered appearance to the street. It protrudes out too far. With time the wood will weather and become quite ugly. Architecturally I am sure that Joseph Eichler would not have approved.

Sincerely,

Charles Fogle

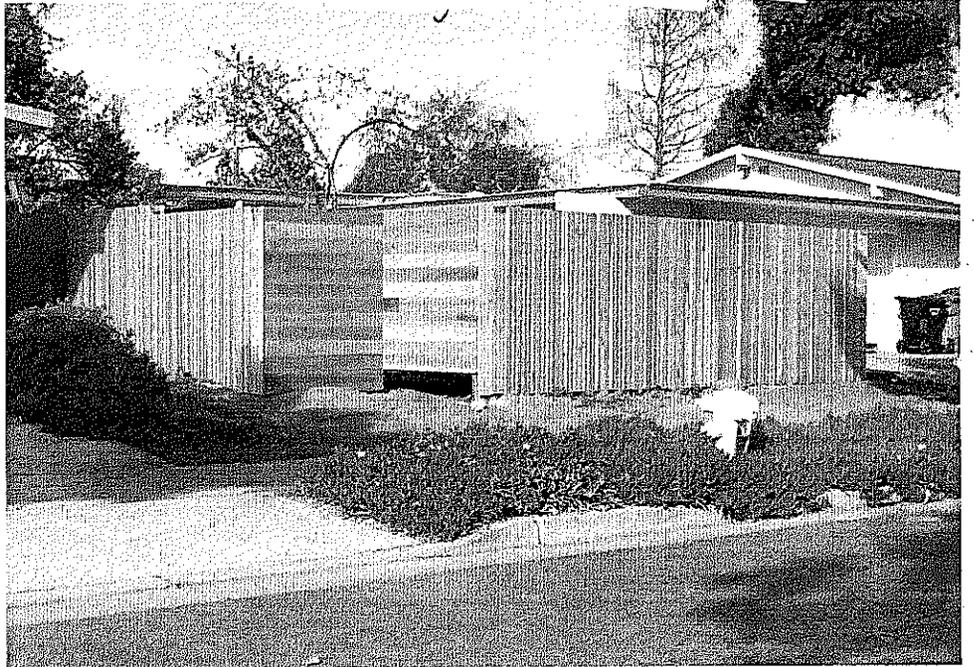


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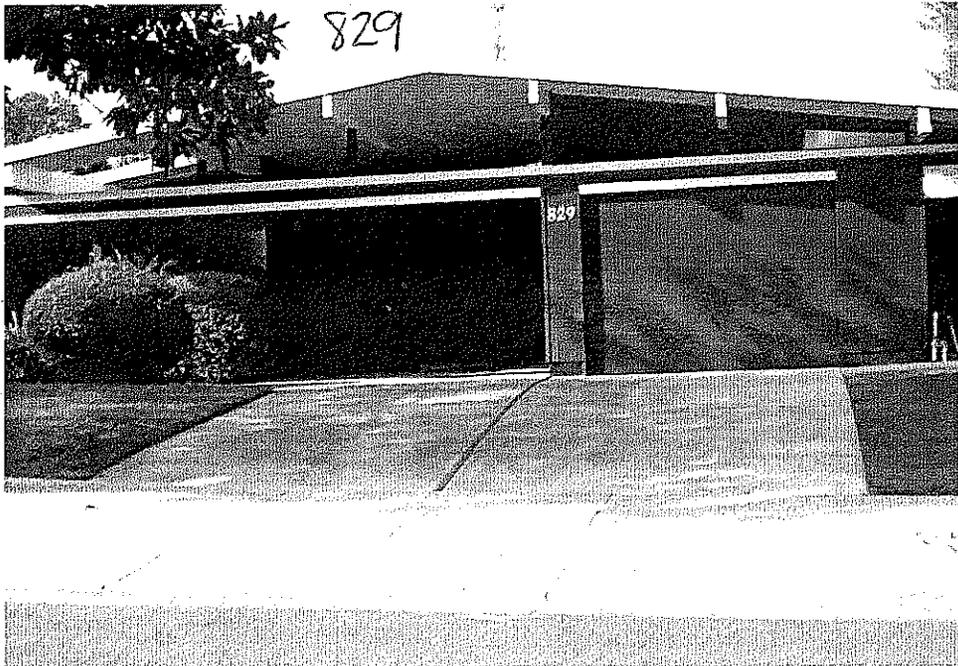


833

805 -



829



805

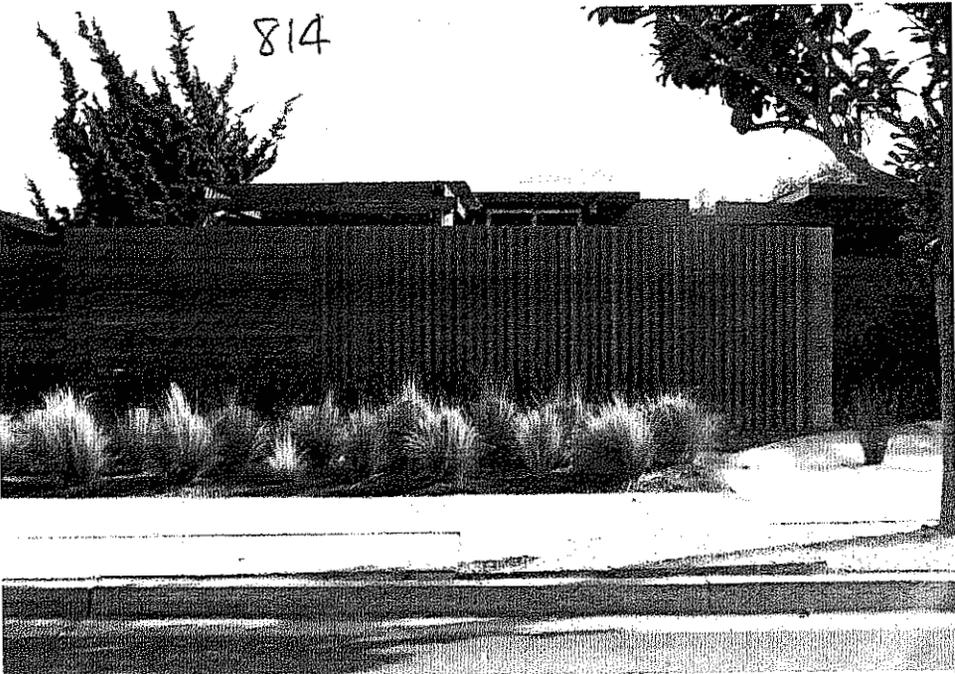


2007-0859 MPP (NY)

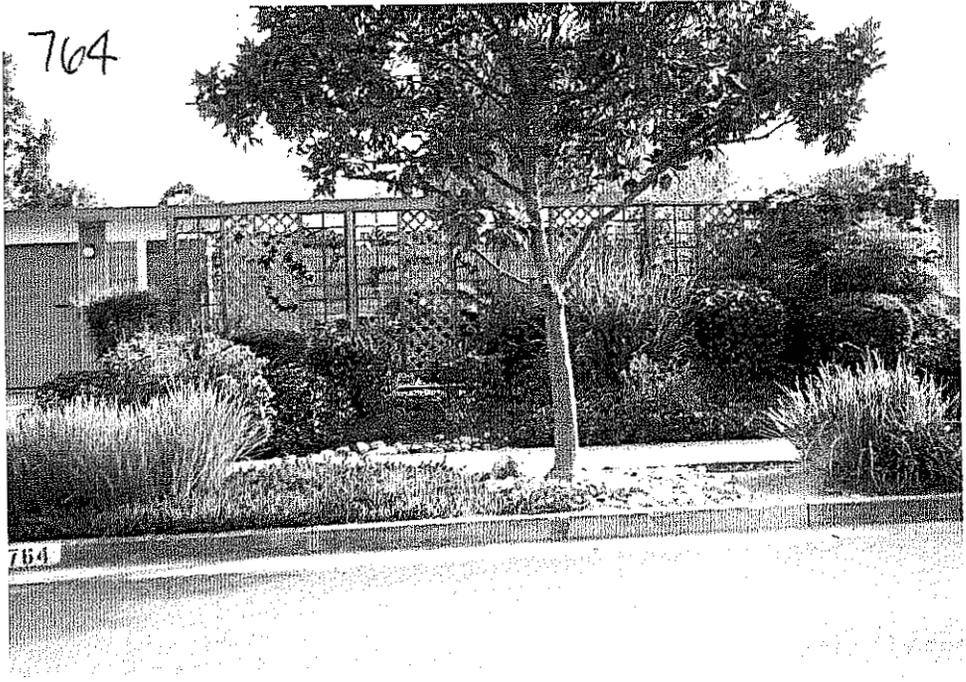
* NO PERMITS

ht: 6'5" within setback

814



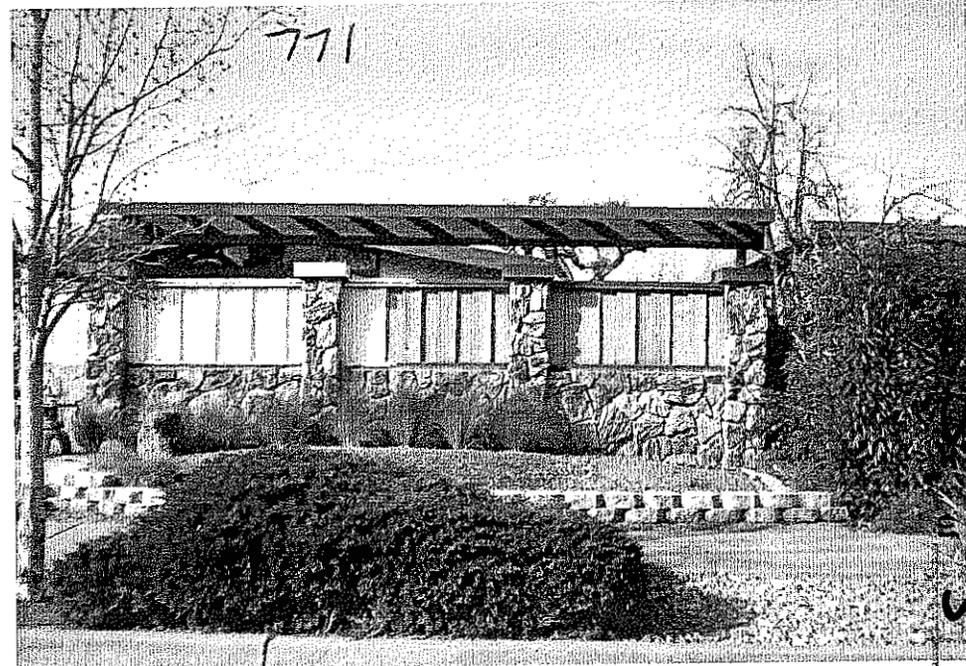
764



830

* NO PERMITS

771



1984-0165 UP
ht: 7'4" sb 10'6"

ATTACHMENT 6