

**PLANNING COMMISSION MINUTES OF JANUARY 14, 2008**

**2007-0724:** Application for related proposals for a property located at **1005 Lakehaven Drive** (near Lakeside Dr) in an R-0 (Low-Density Residential) Zoning District. (APN: 110-23-052) NC;

- **Variance** from Sunnyvale Municipal Code section 19.48.020 to allow a fence greater than three feet high in the driveway vision triangles.
- **Appeal** of a decision by the Director of Community Development denying a Miscellaneous Plan Permit to allow a four-foot fence in the required front yard.

**Noren Caliva**, Assistant Planner, presented the staff report. She said staff was unable to make the findings and recommends the Planning Commission deny the appeal and uphold the decision of the Director of Community Development to deny the Miscellaneous Plan Permit, and deny the Variance.

**Vice Chair Rowe** asked staff for an explanation about driveway vision triangles. Ms. Caliva said there are two types of required vision triangles, one for corner lots which is 40 feet by 40 feet and one for driveways which is parallel to the front property line and parallel to the driveway with 10 feet on both sides.

**Chair Sulser opened the public hearing.**

**Terry Lin**, applicant, provided to the Commission a collection of signatures from her neighborhood supporting her request for a Variance. Ms. Lin also provided copies of pictures from the neighborhood showing fences similar in height to her fence that do not meet code, but grandfathered-in. She said she is requesting a Variance as she is concerned about the safety of her two small children when they are in the front yard and feels she needs the slightly taller fence to protect them from getting out into the heavy traffic on Lakehaven. She said she installed the fence when she moved in, not realizing the height issue. She said she is upset that someone in some other neighborhood would complain about this fence and said if nobody had complained nothing would be required. She said she went to her Lakewood Village Neighborhood Association to see if there was anything they could do and that the President of the Association would make comment this evening. She said this issue has been a lot of trouble for the past six months.

**Chair Sulser** commented to Ms. Lin for the Commission to grant a Variance that they need to be able to make the findings. He asked Ms. Lin whether she thinks she meets the findings listed in Attachment A of the report. She said she feels she meets findings for a Variance due to the significant amount of traffic on Lakehaven Drive which creates a hazard for children playing in the front yard. She said she also feels the open fence design does not block the visibility for vehicles and pedestrians. She said that there are

many other houses in the neighborhood with fences over three feet tall that are grandfathered-in.

**Vice Chair Rowe** asked staff if the fence is twenty feet back from the sidewalk, can the fence be as tall as six feet. **Trudi Ryan**, Planning Officer, said that in the driveway vision triangle the fence can only be three feet tall and explained that other areas of the fence are subject to approval of a Miscellaneous Plan Permit. Ms. Ryan said, as a general rule, three feet is approved for the front yard setback. She said there are a few cases where additional height has been allowed due to particular circumstances of the property. She said after twenty feet, the fence can be taller and would be subject to design review reiterating that within the driveway vision triangle the fence can only be three feet or less.

**Comm. Simons** asked, outside of the driveway vision triangle issue, whether the City has allowed fencing closer than twenty feet back from the sidewalk to be above three feet and for what reasons. Ms. Ryan said yes, that the City has approved fences in the front yard greater than three feet in height for situations such as noise from traffic and homes that are in proximity to the high school. She said there is discretion to allow more than three feet in height, but staff does encourage that fences should be three feet or less.

**Ms. Ryan** referred to a speaker card from **Dennis McDonald**, a resident of Sunnyvale that was unable to stay for the meeting. His card stated that he is in support of Ms. Lin's request for a Variance due to her home being on a busy street, near a four-way stop and on a street where drivers often disregard speed laws. He said he feels Ms. Lin should be allowed to keep her fence.

**Michael Majchrowicz**, a resident of Sunnyvale and President of the Lakewood Village Neighborhood Association said that Ms. Lin's fence issue was discussed at their most recent Association meeting. He said they discussed the intent of the code and what they felt the reasoning was for the driveway vision triangle requirement. He said they felt the requirement is for the safety of those backing out of driveways to provide safe visibility so they do not hit anyone. He said that Ms. Lin took a very proactive approach and discussed with her neighbors whether they felt there was a vision impact due to the fence. He said she obtained signatures from neighbors who felt the fence did not impact their ability to see when pulling out of their driveways. He said he feels that Ms. Lin's reason for wanting to protect her children should be taken into account. He said that staff acknowledged that Variances have been given for busy streets. He said that Lakehaven is not as busy as some streets, i.e. Homestead, and said that it is a main thoroughfare for this particular neighborhood.

**Ms. Ryan** clarified that though various heights of fences have been approved, it is rarer that corner vision triangle or driveway vision triangle Variances have been approved.

**Ms. Lin** said that she hopes everyone can support her request to keep her fence. She commented that this has been a very emotional and stressful situation.

**Comm. Babcock** commented to Ms. Lin that she has a huge back yard and wanted to know why the children needed a fenced area to play in the front yard. Ms. Lin said that she does let her children play in the backyard, but sometimes when they open the front door that the children run out of the house so she likes to have the fenced area where she can keep a gate closed.

**Chair Sulser closed the public hearing.**

**Vice Chair Rowe** moved for Alternative 1 to deny the appeal and uphold the decision of the Director of Community Development to deny the Miscellaneous Plan Permit, and deny the Variance. **Comm. Babcock** seconded the motion.

**Vice Chair Rowe** said that decisions like this are not easy to make, but the Commission has to go by the guidelines. She said the Planning Division has laid out the findings that the Commission has to use and that she agrees with the staff's findings. She said when comparing new fences with old fences that the Lakewood Village residents have often complained about the deterioration in architecture in their area. She said the City is trying to clean up the variations. She said the fence guidelines apply throughout the City, some fences are grandfathered-in due to the guidelines changing after the fences were in place, and new residents can have confusion not knowing what the guidelines are when they see the older fences that do not meet code. Vice Chair Rowe said that when an old fence comes down that the new fence needs to meet the newer requirements. She said that she has to go with the findings in the staff report.

**Comm. Babcock** said that she is unable to make the findings for this Variance and feels the higher fence in the driveway vision triangle is dangerous for the homeowner. She said she feels reducing the fence height to three feet should adequately serve the applicant's reasons for desiring the fence and would meet the City guidelines.

**Comm. Simons** said he would be supporting motion. He said he likes picket fences for this neighborhood, that this is a nicer looking fence than many that he has seen, but that the fence should be shorter.

**ACTION: Vice Chair Rowe made a motion on 2007-0724 to deny the appeal and uphold the decision of the Director of Community Development to deny the Miscellaneous Plan Permit, and deny the Variance. Comm. Babcock seconded. Motion carried unanimously, 7-0.**

**APPEAL OPTIONS: This action on the Miscellaneous Plan Permit is final and the action on the Variance is final unless appealed to the City Council no later than January 29, 2008.**