

**PLANNING COMMISSION MINUTES OF FEBRUARY 11, 2008**

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

**Mariya Hodge**, Assistant Planner, presented the staff report. She explained the appeal and stated staff does not believe that a reduction in fence height is necessary and is recommending the Planning Commission uphold the decision of the Administrative Hearing Officer subject to the Findings in Attachment A and the Conditions of Approval in Attachment B. Ms. Hodge said that following the completion of the report, staff received a letter from the applicant regarding fence building costs and an e-mail from a member of the public regarding the application. She said copies of both items are provided on the dais.

**Comm. Hungerford** referred to Attachment E, page 5 and asked if the proposal for this project is similar to the retaining wall and fence pictured on page 5. Ms. Hodge said yes and explained that for the proposed fence, the retaining wall would be a little higher and the fence portion would be set back about 3' 10". Comm. Hungerford commented to staff that fences are usually measured from the height of the curb and was a little surprised that this fence might be measured differently due to the change in grade. **Trudi Ryan**, Planning Officer, said that staff measures fences both ways. She said the height of a structure measured from the curb provides information about what the structure will look like from the street level. She said, in the case of a change in elevation that staff also looks at what the fence looks like on the opposite side. She said if the fence is taller that six feet from the curb that staff asks for setbacks to allow more landscaping to reduce a walled-in feeling from the sidewalk.

**Comm. Klein** asked how high the fence would be. Ms. Hodge said the property grade changes and said the fence would be less than 10 feet if measured from the top of the curb. Ms. Hodge said the fence would be 5 feet 9 inches from the interior of the property. She said the conditions do not indicate the height and the Commission could add the height for clarification. Comm. Klein confirmed with staff that the fence would be 5 feet 9 inches from the grade. Comm. Klein asked if the retaining wall would be in line with the house at 733 Londonderry. Ms. Hodge said that the proposal is to leave the retaining wall as it is which means the two retaining walls would be slightly offset from each other.

**Vice Chair Rowe** referred to page 5 of the report regarding the landscaping and asked if the height measurement is of the wood fence only or is the additional height of a vine over the top of the fence considered in the height measurement. Ms. Hodge said that the height of the vine growth is not considered in the height of the fence. Ms. Ryan said if the Commission wants to require landscaping to go with the fence, then the height of the fence could be conditioned the same as proposed or something less if the vine is

required. Ms. Ryan added that it would be difficult to measure the height of the landscaping as it would fluctuate. Vice Chair Rowe referred to Attachment D, page 1, item 5 regarding "Grade new outside flowerbed to accommodate a 4-6" drop from new fence line" and asked what this means. Ms. Hodge explained that the retaining wall will be further set back and this would require the grading of the area that would be un-retained soil to the new fence.

**Comm. Hungerford** asked further about the measurements from the curb issue. He referred to a previous project regarding fence height and asked how the measurements were taken for that fence in regard to curb height. Ms. Hodge said she believes Comm. Hungerford is referring to a recent fence application at 1574 Goldfinch. She said that fence also has a grade differential in the rear yard that was slightly less than the proposed fence. She said the Goldfinch fence application went to City Council on an appeal and resulted in approval of a fence that is 7 feet 6 inches from the curb and achieved an interior height of 6 feet 1 inch. The Goldfinch fence was measured at the curb and also met the staff practice of allowing 6 feet on the interior height of the fence.

**Ms. Ryan** commented that there is a lot of difference between the proposed fence and the Goldfinch fence grade and the sidewalk situation is different between the two properties.

**Vice Chair Rowe** said her feeling is that there is a big difference between the grades on the proposed application and the Goldfinch application.

**Chair Sulser opened the public hearing.**

**Gil Tarabanovic**, appellant, asked how many of the Commissioners went to look at the site on Liverpool. He said he wanted to clarify what they saw and discuss the grades and elevations and what the fence will look like. Mr. Tarabanovic provided a hand out, and a picture to further clarify the height of the fence. He referred to several Attachments in the report and said that the height of the soil on the other side of the fence has not been determined. Mr. Tarabanovic referred to Attachment E, page 10 and said the picture shows a gap between the bottom of the current fence and the soil. He said he expects the fence to be lowered to the soil level. He then referred to Attachment D, page 3, figure 4 and said that the drawing is not showing the fence being lowered to the soil level. He said he wants to make sure this fence is put in correctly. He referred to Attachment E, page 8 and said there is daylight shining through the fence which indicates the grades on the back side of the fence. Ms. Ryan confirmed that there is a building code requirement for pools to be fenced with a minimum of 5 foot high fence required around a pool. Mr. Tarabanovic provided a picture to the Commission to show what happens when people begin to alter grades. He said he wants to know exactly the height that the fence will be as he does not see that on the diagrams.

**Vice Chair Rowe** discussed with Mr. Tarabanovic Attachment E, page 10 and Attachment E, page 5 regarding the grade of the soil.

**Comm. Klein** confirmed with staff that this site has a 3 foot retaining wall next to the sidewalk and that a fence is proposed to be placed 5 foot 5 inches from the back of the sidewalk. He said that fence would be 5 foot 9 inches in height. Ms. Hodge said the fence would be 5 foot 9 inches as measured from the grade where the fence is located. Comm. Klein asked what the grade would be 5 foot 5 inches from the sidewalk. Ms. Hodge said staff has an idea of the grade, but it may be off a few inches as the property slopes upward slightly as it moves away from the current fence. She said the current grade is 44 inches for the grade at the current location of fence. She said staff believes this is 44 inches at the curb and further back it could be a few inches different.

**Vice Chair Rowe** referred to page 8 of the report that indicates that the retaining wall is 3 feet 11 inches to 4 feet 2 inches in height and that the retaining wall would be reduced to a height no more than 3 feet. Vice Chair Rowe asked if the retaining wall would be less than 3 feet in some areas. Ms. Hodge said the applicant's proposal is for the retaining wall to be 3 feet in height. Vice Chair Rowe asked staff about the existing adjacent retaining wall which Ms. Hodge indicated is 25 inches in height.

**Dorothe Cox**, applicant, said that after the fence is moved back that there will be a tree on the outside of the fence along with other landscaping. She said there is a board around a tree in the backyard that is a raised vegetable garden. She explained that the retaining wall will be 9 inches higher than the neighbor's retaining wall, but the fences will be the same height. She added that the neighbor's second retaining wall is 18 inches higher than the first one. Ms. Cox said that since last spring she has been trying to obtain a fence permit to replace the fence that has been in place for 34 years. She said so far the effort has cost about \$7,000. She said she still needs to raise the money to complete the fence. She said the action started when she refused to sign a petition in support of an 8 foot fence on Goldfinch. She said she spoke against the fence and since then has been harassed and had property damaged and other difficulties. She said in November the Administrative Hearing Officer approved with conditions to relocate the fence. She said the proposed plan puts the fence in alignment with the rear neighbor's fence and at the same height, the existing retaining wall is in alignment with the neighbor's wall and will be reduced in height by 12 inches. She explained there is an 8 inch difference between where the fence will be placed and the 36 inch retaining wall which will be tapered on a slope. She said the area between the wall and the fence will be sloped on her side and tiered on the neighbor's side. She said she does not know why Mr. Tarabanovic has appealed the approval of her permit. She said this has become a neighborhood issue and is continually being delayed. Ms. Cox said she wants the harassment to stop. She said tell her what conditions the Commission wants fulfilled and she will comply. She said she just wants to get the fence done and get it done properly.

**Vice Chair Rowe** discussed with Ms. Cox the sloping in the neighborhood. Vice Chair Rowe asked if the sloping is why she feels she needs a higher retaining wall. Ms. Cox said there is dirt behind the retaining wall and if the dirt is removed there will be an erosion problem. Vice Chair Rowe further discussed the sloping and other options. Ms. Cox confirmed that the swimming pool is 11 feet from the fence.

**Sugher Singh**, a resident of Sunnyvale and neighbor, said that Ms. Cox has made a lot of improvement to her home over the past 26 years that he has known her. He spoke in support of the application. He said he hopes that the Planning Commission will take some action to end the problem before it results in some irreparable damage to property or personal injury. He said in the past 26 years he has had no problems in his neighborhood, but in the past six months there has been vandalism to his lawn and damage to his property that have lead him to put in a motion detector. He asked the Commission to please help restore the peace to the neighborhood and help end the dispute.

**Michael Thornton**, a resident of Sunnyvale and neighbor, said he opposes the proposed 10 foot high fence at the property line. He said he just completed and finalized his Use Permit process, which was an expensive eleven month process which ended with an appeal to City Council. He said it seems that staff's views and criteria vary from applicant to applicant and explained his reasoning. He said he discussed with staff many issues including reducible front yard fence definitions, grade differentials and privacy issues and said he was denied vehemently until the item went to City Council where a compromise was made. He said this report indicates that all the findings are being met. He said all he needed was six feet in the back. He said staff will argue that this fence is setback. He said if her grade is the same as 733 Londonderry then an 8 foot fence at her property line should be sufficient. He said if she does require 10 feet then she will need to move it back an additional 4 feet from the property line.

**Vice Chair Rowe** asked staff how far back from the retaining wall is the fence going to be. Ms. Hodge said the fence is proposed to be 3 feet 10 inches back from the current location. Vice Chair Rowe confirmed that the fence will be 5 feet 9 inches from grade, and about 8 inches different from the current 36 inch retaining wall, up to the current grade. Staff also confirmed that the fence may slope up another couple of inches which would be from the curb, 9 feet 5 inches to 9 feet 7 inches, and 5 feet 9 inches from the grade in the back yard.

**Mr. Tarabanovic** referred to Attachment E, page 8 which shows where the grade exists. He said he wants to make sure what the overall height of the fence will be. He said he has no objection to the fence being 8 feet in height. He said he wants to make sure the lattice matches the height of the neighbor's fence at 733 Londonderry. He said Attachment D does not show the fence matching the neighbor's fence. He said this is a very high fence and does not match what is going on in the neighborhood. He said he has over 40 signatures from neighbors in the neighborhood that said that there was no problem with Mr. Thornton's fence. Mr. Tarabanovic said he is willing to let her have an 8 foot fence from the curb. He said no one wants to tell him what the grade is, and he does not want the fence to go any higher than the back neighbor's fence. He said if it matches the neighbor's fence elevation-wise that he does not have a problem with the fence. He provided documents to the Commission that show heights of fences in the neighborhood. He further discussed his opposition to the fence and the way this has been handled. Mr. Tarabanovic said he is most concerned about the north side of the

home and reiterated his other concerns about the elevations, grade differentials and the height of the dirt at the fence.

**Vice Chair Rowe** had staff clarify whether the proposed fence would be the same height as the neighbor's fence. Ms. Hodge said she cannot say whether the two fences would be at exactly the same level if the grades of the two properties differ and it depends where the applicant locates the fence although the applicant has represented that they will be the same height. Vice Chair Rowe asked if the grade of the whole block is the same. Ms. Hodge said it appears to staff that the subject property seems to be higher and no survey has been done. Vice Chair Rowe asked if the grade of the proposed application is higher than the grade of the previous Goldfinch application. Staff discussed the grades and said that there is a general rule of thumb that a 6 foot privacy fence from the interior height is considered. Ms. Ryan said that staff does not have the grade information on other properties in the neighborhood.

**Ms. Cox** said when the new fence is finished it will be exactly the same height as the rear neighbor's fence and will continue the line and be matched by the north side. She said the neighbor's fence is a solid board fence. She said her fence will only be about 4 feet high and then have lattice matching the height of the neighbor's fence. Ms. Cox said the pool grade is slightly lower than the house so it would not drain toward the house. She said the fence will have plants in front of it including bougainvillea.

**Vice Chair Rowe** asked if there would there be other landscaping other than the bougainvillea. Ms. Cox explained that there would be other landscaping.

**Chair Sulser closed the public hearing.**

**Comm. Babcock moved for Alternative 1 to uphold the decision of the Administrative Hearing Officer to approve the Use Permit with the design shown in Attachment D and the attached Conditions of Approval.** Vice Chair Rowe asked the maker of the motion if she would consider a Friendly Amendment that the retaining wall be lowered a compromising number, say five inches, so that the retaining wall would be about 31 inches rather than 36 inches high. Comm. Babcock said no, and said she feels requiring the applicant to re-grade her property for the installation of a fence that is set back this far from the sidewalk is more than adequate. **Vice Chair Rowe seconded the motion.**

**Comm. Klein asked for a Friendly Amendment as clarification, that the conditions include that the fence height shall not exceed 5 feet 9 inches from the existing grade level. The Friendly Amendment was accepted by the maker and seconder of the motion.**

**Comm. Hungerford** asked for a Friendly Amendment that there be a condition that the top of the new fence can be no higher than the neighboring fence. Comm. Babcock said she would prefer leave the clarification that Comm. Klein added. Comm.

Hungerford and Comm. Babcock further discussed the Friendly Amendment with Comm. Babcock not accepting Comm. Hungerford's Friendly Amendment.

**Comm. Simons** commented that he thinks the real issue is the measurement of the height of the fence, 5 feet 9 inches from the present grade and that would be the indicator of the height regardless of any other fences.

**Ms. Ryan clarified with Comm. Klein that his Friendly Amendment would include that the fence would be 5 feet 5 inches from the sidewalk at the existing grade.**

**Comm. Babcock** said she is able to make the findings on this application. She commented that she feels the polarization over a few inches of fence in this neighborhood is sad. She said there is nothing stopping anyone from growing a 20-foot hedge or a native oak tree that would provide a whole lot more privacy than any wooden fence. She said that the dislike of people when a fence is set back this far from the sidewalk is very sad.

**Vice Chair Rowe** said she agrees with Comm. Babcock. She said she can go along with this recommendation as the homeowner has agreed to move the fence 3 feet 6 inches back from the sidewalk and has said it will match the height of her neighbor's fence. Vice Chair Rowe said the only difference is the retaining walls are different heights, that the homeowner has made compromises and that she thinks this will be an attractive fence.

**Comm. Klein** said he would be supporting the motion. He said the applicant would not be changing the grade and would be changing the retaining wall. He said this should beautify the neighborhood.

**Comm. Hungerford** said he would not be supporting the motion. He said he thinks it would be more attractive if the fence were equal to the height of the neighboring fence. He said the applicant was willing to go with making it equal in height to the neighboring fence.

**Chair Sulser** said that he is also saddened by the hard feelings that seem to be going on in this neighborhood and he hopes that neighborhood can fix the situation.

**ACTION: Comm. Babcock made a motion on 2007-0822 to uphold the decision of the Administrative Hearing Officer to approve the Use Permit with the design shown in Attachment D and the attached Conditions of Approval with modifications; that the conditions include that the fence height shall not exceed 5'9" from the existing grade level and 5'5" from the sidewalk at the existing grade. Vice Chair Rowe seconded. Motion carried 6-1, Comm. Hungerford dissenting.**

**APPEAL OPTIONS: This action is final unless appealed to the City Council no later than February 26, 2008.**